

ORDER BELOW EXH.5 IN R.C.S.No.69/2022

(Vishwanath Shere V/s. Valmik Shere and Ors.)

By way of this application plaintiff has sought temporary injunction restraining defendants to disturb his possession and to restrain defendants from alienation of the landed property bearing Gat No.696 and 680 situated within the local limits of village Sakurde, Taluka Purandar, District Pune specifically mentioned in paragraph No.1 of the plaint (hereinafter referred as 'the suit property' for short) till decision of this suit vide Order 39 Rule 1 and 2 of the Code of Civil Procedure,1908 (hereinafter referred as 'CPC' for short).

2. The sum and substance of the grievance of plaintiff that, the suit property is his ancestral property and defendant No.1 fraudulently get executed sale deed dated 16/02/1982 from his illiterate father without plaintiff's consent and without any legal necessity. No consideration has been given to plaintiff or his father by defendant No.1. Hence, the alleged sale deed is bogus and shame. Despite knowledge about the facts aforesaid, defendant No.1 has alienated the suit property to defendant No. 2 to 6. Plaintiff has taken objection in respect of mutation entry thereby mutation entry No. 2735 and 2925 have been canceled. Then, defendant No.1 has fraudulently sanctioned mutation entry No. 3234. Plaintiff is unaware about said mutation entry as previous mutation entries were canceled. The suit property is in possession of plaintiff. Plaintiff has not handed over possession to defendants, therefore, they have not disturbed plaintiff's possession as they have cordial relation with each-other. But at present by taking disadvantages of their names in revenue record, defendants have trying to alienate the

suit property. Therefore, the plaintiff constrained to file this suit and present application.

3. The defendant No.1 and 2 to 6 resisted this application by filing say at Exh.22 and Exh.24 respectively. They have denied all the allegations put forth by plaintiff. It is contended that the suit property was the ancestral property of the plaintiff but plaintiff's father was never cultivating it not it was his source of income. In the year 1942, plaintiff's father was mortgaged the suit property to Bala Raoji Shere for consideration of Rs. 160 on dated 06/06/1942. Accordingly, mutation entry No.1006 has been sanctioned. The defendant No.1 has paid consideration amount of Rs.5000/- to plaintiff's father and thereafter plaintiff's father has executed the sale deed dated 16/02/1982 by due procedure of law. After execution of sale deed defendant No.1 put in possession of the suit property. Defendant No.1 has never taken any disadvantage of plaintiff's father. Plaintiff has suppressed material fact of his father's illiteracy.

4. It is contended that defendant No.1 has sold out Gat No. 680 to father of defendant No. 2 to 6 by executing sale deed dated 11/12/1997 for consideration of Rs.40,000/-. Accordingly, name of defendant No.2 to 6's father mutated in revenue record vide mutation entry No.3425. Name of Vasant Shankar Shere has been remained hollow in the revenue record, his name has removed by order of Tahsildar dated 04/04/2005. Mutation entry No. 2735 and 2925 have canceled for the reason of non-consent of co-sharers. Defendant No. 2 to 6 are inherited the suit property after death of his father. Plaintiff's father has never made any complaint about sale deed. Father of defendant No.2 to 6 are subsequent purchaser. Revenue record of the suit property shows

defendants' possession. Plaintiff has challenged mutation entries before the Revenue Court by filing different appeal which are rejected and order passed in favour of defendants. The suit is barred by law of limitation. Therefore, defendants urged for rejection of application with compensatory costs.

5. Perused the application supported with an affidavit and say of defendants. The plaintiff filed written notes of argument vide Exh.32. Defendant No.1 filed written notes of argument at Exh.38. Heard Ld. Advocate Shri. B.N. Pilane for defendant No. 2 to 6.

6. Following points emerges for my determination and I have recorded my findings thereon as to reasons to follow.

Sr. No.	Points	Findings
1.	Whether plaintiff has made out prima-facie case ?	No.
2.	Whether balance of convenience lies in favour of plaintiff ?	No.
3.	Whether plaintiff would suffer irreparable loss, if application is rejected ?	No.
4.	What order ?	Application is rejected.

REASONS

AS TO POINT No.1 :

7. It is well settled that the grant or refusal of the temporary injunction is covered by three well established principles i.e. Prima-facie case, balance of convenience and irreparable loss. With the first

condition as sine qua non the plaintiffs must prove two conditions consecutively. Mere proof of one of the three conditions does not entitle the plaintiff to an order of temporary injunction. Besides all these three factors, it must also take into consideration the conduct of the parties.

8. It is well settled that, while considering the question of *prima-facie* case at the time of deciding interim application deeper examination of the question is not permissible. *Prima-facie* case means the existence of the circumstances justifying the trial of the questions of facts and law raised in the litigation. The plaintiffs is required to established that, in the event of non-interference by the Court, there will be irreparable injury and substantial loss caused. Keeping in mind the above proposition of law while dealing the application under Order 39 Rule 1 and 2 of the CPC, it is necessary to see whether plaintiff has made out his *prima-facie* case or not.

9. While deciding the temporary injunction application, possession of the suit property is to be considered. It is contention of the plaintiff that he is having possession over the suit property. Despite execution of sale deed in favour of defendant No.1, possession is never handed over. To prove his contention, plaintiff filed affidavit and documents along with list Exh.3. On the other hand defendants submitted that after execution of sale deed, defendant No.1 was in possession and subsequently defendant No.2 to 6 are in possession of the suit property. To support their contention, they placed on record document at list Exh. 37, 40 and 44 which are referred at relevant place hereinafter while discussion.

10. Revenue record i.e. 7/12 extract of the suit property Gat No.680 (Exh.3/1) show name of defendant No.2 to 6 in the occupancy column. Same as in occupancy column of Gat No.696 (Exh.3/2) shows name of

defendant No.1 in ½ share and names of Mahadev Bala Gaikwad and Surekha Hanumant Pilane in remaining ½ share. There is no document on record which show that plaintiffs are in possession of the suit property. Sale deed is the document of title. Recitals of sale deed dated 16/02/1982 (Exh. 3/3, Exh.40/1 and Exh.37/3) shows that possession of the suit property was handed over on the date of sale deed to defendant No.1 and subsequently to defendant No.2 to 6. In pursuant to sale deed mutation entry has been recorded. Though mutation entry No.2735, 2925 and 3234 (Exh.3/4 to 3/6) are canceled but it does make sale deed illegal at this stage.

11. Plaintiff and defendant No.2 to 6 filed affidavits of adjacent land owner to show their possession over the suit property but as both parties are filed counter affidavits which cannot considered. It is admitted position that sale deed is executed. By this suit plaintiff challenged the validity of alleged sale deed. At this stage legality of sale deed cannot be decided, whether it was executed fraudulently or not is the matter which decided on merit. Moreover, both sale deed is registered document which is having presumptive value. It is settled principle of law that title follow the possession.

12. Ld. Advocate for defendant No.1 relied on certain case laws of Hon'ble Supreme Court in case of *Kalyan Singh Chauhan V/s. C. P. Joshi AIR 2011 SC 1127*; *S. P. Chengalvaraya Naidu (dead) by Lrs. V/s. Jagannath (dead) by LRs. and Ors. AIR 1994 SC 853* and Hon'ble Bombay High Court in case of *Natthu S/o. Baliram Nichat and Others V/s. Rajendra S/o. Tukaram Madankar 2022(4) Mh.L.J. 795*. Ld. Advocate for defendant No.1 do not satisfy the court with the relevancy of facts of present case in hand and material propositions emerge from

the case laws. Hence, with due respect those are not applicable to case in hand. Thus, having regard to the facts and circumstances of the case and after considering the proposition of law, I am of view that, the plaintiff has no prima-facie case. I therefore, answer point no.1 in negative.

AS TO POINT No.2 AND 3 :

13. I have already held that, the plaintiff has no prima-facie case. In the circumstances balance of convenience does not tilt in favour of the plaintiff. He has not suffered irreparable loss which cannot be compensated in terms of money. It is to be noted here that equally efficacious remedy is available to the plaintiff. Section 41 (h) of the Specific Relief Act, "*An injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.*" When equally efficacious remedy available, injunction cannot be granted. Hence, I answer point No.2 and 3 in negative.

AS TO POINT No.4 :

14. In light of above discussion, in answer to point No.4, I pass following order;

ORDER

1. Application below Exh.5 stands rejected.
2. No order as to costs.

Saswad
Date:09/03/2023

Sd/-
(Smt. D. M. Patil)
Jt. Civil Judge Junior Division,
Saswad.

C E R T I F I C A T E

“I affirmed that the contents of this P.D.F. file order are same word for word as per original order”.

Name of Stenographer (Grade 3) : Mrs. S. R. Kamble
Name of the P. O. : Smt. D. M. Patil,
C.J.J.D & J.M.F.C., Saswad.
Date of Order : 09/03/2023
Order signed by presiding officer on : 09/03/2023
Order uploaded on : 10/03/2023