

ORDER BELOW EXH. 5 REG.CIVIL SUIT NO. 230/2016
(Passed on 01st February, 2019)

The plaintiffs have made the present application under the provisions of Order 39 Rule 1 & 2 of Code of Civil Procedure.

In brief, facts of the present application are as follows:

02. The subject matter of the present suit is the property admeasuring area 3H. 28R. in Gat No. 421/1 situated at Mouje Pandharewadi, Tal. Daund, Dist. Pune more particularly described in para 1 of the plaint. The said property is hereinafter referred as 'Suit Property' for the sake of brevity. The plaintiffs state that, defendant no. 1 had executed a registered agreement to sell in their favour on 03/12/1992 in relation to the suit property and had handed over its possession to them. Later on, Shri. Vishnu Kalate power of attorney holder of defendant no. 1 executed sale deed in their favour on 12/07/1995. The said sale deed was registered bearing registration no. 511/1997. Being so the position, defendant no. 1 has illegally executed sale deed in favour of defendant no. 2 to 4 in relation to the suit property bearing registration no. 5/1996 on 16/01/1996. They states that, the defendants are causing obstruction to their possession in the suit property and are about to alienate it. Thus, they have filed the present application for temporary injunction to restrain them from causing obstruction to their possession in the suit property and also to restrain them from alienating the suit property and creating third party interest.

03. Defendant no. 1 to 4 have filed detail say vide Exh.15. The sum and substance of their say is that, they admit the execution of the agreement to sell Dt. 03/12/1992 in favour of the plaintiffs by defendant no. 1, but deny the other contentions made in it. They state that, as per the agreement to sell it was expected that the plaintiffs should get the sale

deed executed within a period of 6 months, however they failed to do so. They also state that, they had issued notice to the plaintiffs through their Adv. Shri. L. F. Sayyad asking the plaintiffs to pay the balance amount and get sale deed executed, however, the plaintiff failed to do so and so the defendant no. 1 issued a public notice on 05/11/1995 in Daily Rashtratej Newspaper asking the plaintiffs to complete the said transaction and if they failed to do so it would be presumed that, the said transaction has been canceled. The defendants states that, even after the publication of notice in the newspaper, the plaintiffs failed to pay balance consideration amount and so defendant no. 1 executed registered sale deed in favour of defendant no. 2 to 4 on 16/01/1996 in relation to the suit property. They further state that, defendant no. 1 has at no point of time executed power of attorney in favour of Vishnu Kalate and therefore the sale deed executed by Vishnu Kalate in favour of plaintiffs is illegal. They deny the possession of the plaintiffs over suit property rather contends that, they are in possession of the suit property on the basis of the sale deed executed in their favour. Mainly on the above grounds they pray to reject the application.

04. On the rival contentions of the parties following points arose for my determination and I have recorded my findings thereon with reasons as follows:

Sr. No.	POINTS	FINDINGS
1	Whether plaintiffs have prima-facie case in their favour ?	... Partly in affirmative
2	Whether balance of convenience lies in favour of plaintiffs?	... Partly in affirmative
3	Whether plaintiffs will suffer irreparable loss, if the temporary injunction is rejected ?	... Partly in affirmative

4	What order ?		Application is partly allowed
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REASONS

AS TO POINT NO. 1 :-

05. As the above points are interlinked with each other and to avoid repetition of evidence, they are taken up together for common discussion. At the stage of deciding an application for temporary injunction, the three parameters i.e. prima facie case, balance of convenience and irreparable loss are to be considered. The phrases prima facie case, balance of convenience and irreparable loss are not rhetoric phrases but the words of width of elasticity to meet myriad situation presented by man's ingenuity in given facts and circumstances, but is always hedge with sound exercise of judicial discretion to meet the ends of justice.

06. Having considered the submission made on behalf of both the parties & on perusal of record, it appears that, the plaintiffs have come up with a specific case that, they are the owners & possessors of the suit property by virtue of the sale deed Dt. 12/07/1995 bearing no. 511/1997 executed in their favour by the power of attorney holder Shri. Vishnu Kalate on behalf of defendant no. 1. The same is denied by defendant no. 1 who contends that, he has never executed power of attorney in favour of Shri.Vishnu Kalate and as such, the question of executing sale deed in favour of plaintiffs does not arise. He further states that, he has executed a registered sale deed in favour of defendant No. 2 to 4 on 16/01/1996 and has handed over the possession of suit property.

07. In the case in hand, both plaintiffs as well as defendant No.2 to 4 claim ownership and possession over the suit property. The plaintiffs in

order to support their contention, have relied upon the registered agreement to sell Dt. 03/12/1992 executed by defendant no. 1 in favour of the plaintiffs which is placed on record vide Exh.3/2, the registered sale deed Dt.12/07/1995 executed by the power of attorney holder of defendant no.1 vide Exh.3/3, the power of attorney executed by defendant no. 1 in favour of Vishnu Kalate vide Exh.37/3.

08. So far as agreement to sell Dt. 03/12/1992 is concerned, defendant no. 1 has admitted the fact that, he has executed a registered agreement to sell in favour of the plaintiffs. However denies the execution of power of attorney and consequently the execution of the sale deed in favour of plaintiffs. The Ld. Adv. Shri. R. D. Prabhune representing the defendants while pointing the agreement to sell Dt.03/12/1992 vide Exh.3/2 made it a point to argue that defendant no. 1 was of 18 years of age and as such, was a minor and an agreement with a minor is void ab initio.

09. In support of his contention he has relied on the following citations:

1. Padma Vithoba Chakkayya vs. Mohd. Multani, MANU/SC/0396/1962,
2. Ritesh Agarwal and Ors. vs. Securities and Echange Board of India and Ors., MANU/SC/7687/2008

10. On the contrary the Ld. Adv.Shri.A.S.Mahajan representing plaintiffs in response to the arguments advanced by Ld. Adv. Shri.R.D.Prabhune, made it a short point to argue that, the defendants have not raised the plea of minority of defendant no. 1 at the time of execution of agreement to sell in their written statement and therefore they cannot argue that point.

11. Much was focused and emphasized on the point of minority of defendant no. 1 by the Ld. Adv. Shri. R. D. Prabhune but I refrain myself from pondering upon that issue, as the same needs to be considered at the time of trial. It is settled principle that, at the time of deciding an application of temporary injunction, the Court should not go into the merits of the case.

12. So far as the present application is concerned, it is the grievance of the plaintiffs that, the defendants are causing obstruction to their possession in suit property and are about to alienate the same. As stated above, both the parties claim possession over the suit property. The plaintiffs in order to show their possession rely upon the recitals in the agreement to sell Dt. 03/12/1992 vide Exh.3/2. Perusal of the same goes to show that, the possession of the suit property was handed over to the plaintiffs. The plaintiffs have also filed affidavit of Shri. Rasiklal Shrimal Meher vide Exh.34 who state that, the plaintiffs are in possession of the suit property.

13. As against this, the defendants in order to prove possession of defendant no. 2 to 4 rely upon the 7/12 extract place on record vide Exh.3/1. Perusal of the same goes to show that, defendant no. 2 to 4 are in possession of the suit property.

14. On having a combined look at the documents which are placed on record by both the parties, it appears that, apart from the recital in the agreement to sell Dt. 03/12/1992 there is no other document to show the possession of the plaintiffs, whereas on the other hand the name of the defendant no. 2 to 4 appear in the 7/12 extract of the suit property.

15. Mere, recital of possession in the agreement to sell would not

be sufficient to hold that, the plaintiffs are in possession of the suit property, when the 7/12 extract of suit property stands in the name of defendant no. 2 to 4. As such the plaintiffs have prima facie failed to prove possession over the suit property and consequently the relief of temporary injunction to that effect cannot be granted.

16. Now, turning up to the next grievance of the plaintiff is that, defendant no. 2 to 4 are about to alienate the suit property and they be restrained from alienating the same and creating third party interest in it. As stated above, both the plaintiffs and defendant no. 2 to 4 claim ownership over the suit property. As per the plaintiffs, by virtue of the sale deed executed in their favour by power of attorney holder Shri. Vishnu Kalate they are the owner of suit property. As against this, defendant no. 2 to 4 claim ownership on the basis of sale deed executed by defendant no. 1 in their favour on 16/01/1996. As such there are two sale deeds of the same property executed in favour of the plaintiffs and defendants. Although, defendant no. 1 has denied execution of power of attorney in favour of Vishnu Kalate but the same cannot be decided at this stage and can be considered at the time of trail.

17. As on today, it appears that, by virtue of the sale deed executed by defendant no. 1 in favour of defendant no. 2 to 4, the names of defendant no. 2 to 4 reflect in the 7/12 extract of the suit property. The plaintiffs have apprehension that, if defendant no. 2 to 4 sale out of the suit property they would suffer irreparable loss. So far as this point is concerned, it can not be lost sight off, that defendant no. 1 had executed an agreement to sell in favour of plaintiffs on 03/12/1992 and consequently sale deed was executed in favour of plaintiffs by the power of attorney holder of defendant no. 1 in favour of plaintiffs. As to whether defendant

no. 1 had executed power of attorney in faovur Vishnu Kalate or not, needs a full fledged trial and the same cannot be considered now. As for now, the plaintiffs by holding agreement to sell Dt. 03/12/1992 and sale deed Dt.12/07/1995 have prima facie showed that a right exists in their favour in relation to the suit property and if defendant no. 2 to 4 alienate the suit property they would suffer irreparable loss. Moreover, in order to avoid future complexities and multiplicity of proceeding it is necessary to restrain defendant no. 2 to 4 from alienating suit property. Hence, taking into consideration the above things I answer point no. 1 to 3 partly in affirmative and proceed to pass the following order:

ORDER

1. Application Exh. 5 is partly allowed.
2. Defendant no. 2 to 4 are hereby temporarily restrained from alienating the suit property and creating third party interest in the suit property.
3. Cost in cause.

Place : Daund.
Date : 01/02/2019.

Sd/-
(Smt. S. D. Awasekar)
Civil Judge Jr. Division, Daund,
Tal. Daund, Dist. Pune.

CERTIFICATE

I affirm that the contents of this P. D. F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	:	ATNURE M. C.
Court	:	Smt. S. D. Awasekar, CJJD & JMFC, Daund.
Date	:	01.02.2019.
Judgment signed by the presiding officer on	:	01.02.2019.
Judgment uploaded on	:	02.02.2019.