

MHRG070001472012

**REGULAR CIVIL SUIT NO. 125/2012****ORDER BELOW EXH. 158**

The present application has been filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure seeking a temporary injunction against defendant No. 9, restraining him from alienating, transferring, or creating third-party interest in respect of the suit property till the disposal of the suit.

Plaintiff's Case:-

02. It is the contention of the plaintiff that defendant No. 9 is attempting to alienate the suit property and to create third-party interest therein. It is further submitted that in respect of House No. 145, darkhast proceedings have been initiated and a possession warrant has been issued. The said property forms part of the suit property, and in order to avoid the execution of the said warrant, there is a strong possibility that defendant No. 9 may dispose of or alienate the suit property. The plaintiff has therefore sought a temporary injunction to prevent such alienation during pendency of the suit.

03. Defendant No. 9 has filed his reply and strongly

opposed the application. It is contended that the matter is already fixed for the evidence of the plaintiff. The plaintiff has already filed his examination-in-chief by way of affidavit and has been cross-examined at length. The defendant submits that this application is filed with a view to delay the proceedings and to avoid further cross-examination.

04. The defendant further contends that the plaintiff has not produced any document or affidavit to show that defendant No. 9 has taken any step towards alienation of the suit property. It is further submitted that, as per Section 52 of the Transfer of Property Act, there exists a bar of lis pendens, and any transfer, if made during the pendency of the suit, will automatically be subject to the outcome of this litigation. Hence, no injunction is required.

05. The defendant further contends that the suit property was purchased by him in the year 2006 from the lawful owner, whereas the plaintiff claims through an agreement to sale executed subsequently without verifying the title or making proper search. It is therefore submitted that no prima facie case exists in favour of the plaintiff.

06. The learned Advocate for the plaintiff argued that, defendant No. 9 is attempting to alienate and create third-party interest in the suit property. It is contended that in respect of House No. 145, darkhast proceedings have

been filed, and a possession warrant has been issued. The said house forms part of the suit property. In order to avoid execution of such possession warrant, defendant No. 9 is likely to dispose of the suit property. The plaintiff apprehends that if such alienation takes place, the plaintiff will suffer irreparable loss, and the very purpose of the present suit will be frustrated.

07. The learned Advocate further argued that if defendant No. 9 is not restrained, third-party rights may be created, and multiplicity of proceedings will arise. It is therefore prayed that a temporary injunction be granted under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, restraining defendant No. 9 from alienating, transferring, or creating any third-party interest in the suit property till final disposal of the suit.

08. The learned Advocate for defendant No. 9 opposed the application and contended that the plaintiff has not produced a single document or affidavit to show that defendant No. 9 has made any attempt to sell or dispose of the suit property. It is submitted that the allegations made in the application are vague and baseless. The plaintiff has not filed any evidence such as public notice, advertisement, agreement, or witness statement showing any intention of defendant No. 9 to alienate the property. The learned Advocate further submitted that the matter is already pending for the plaintiff's evidence. The

plaintiff has filed his examination-in-chief by way of affidavit and has been cross-examined at length. In order to delay the proceedings and to avoid further cross-examination, this application has been filed with mala fide intention.

09. It is argued that, as per Section 52 of the Transfer of Property Act, the doctrine of lis pendens operates automatically, and hence, any transfer, if made during the pendency of the suit, shall be subject to the result of this litigation. Therefore, there is no necessity to grant injunction. The defendant further submitted that the suit property was purchased by him in the year 2006 from the lawful owner, whereas the plaintiff has entered into an agreement to sale subsequently, without making proper title search. Hence, the plaintiff has no prima facie case in his favour. It is further submitted that the plaintiff has failed to prove any imminent threat of alienation, and therefore, no injunction can be granted merely on imaginary apprehension.

10. Perused the application and say. Perused the documents filed on record. Following points arise for my determination and I have recorded my findings with reasons stated thereon:-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out a	<u>In the</u>

	prima facie case for grant of temporary injunction ?	<u>negative.</u>
2.	Whether the balance of convenience lies in favour of the plaintiff ?	<u>In the negative.</u>
3.	Whether the plaintiff will suffer irreparable loss or injury if temporary injunction is not granted ?	<u>In the negative.</u>
4.	What order ?	<u>The application is rejected.</u>

REASONS

As to point No.1 to 3:-

11. While deciding the application for temporary injunction, the Court has to consider the important points of prima-facie case, balance of convenience and irreparable loss.

12. Upon hearing both sides and perusal of the record, it is revealed that except for bare allegations, the plaintiff has not produced any prima facie documentary evidence to substantiate his contention that defendant No. 9 is taking any steps to alienate or create third-party interest in the suit property. No public notice, sale advertisement, agreement, or affidavit of any witness has been filed to demonstrate such apprehension.

13. As per the settled principles under Order XXXIX

Rule 1 and 2 of the Code of Civil Procedure, temporary injunction can be granted only when the applicant establishes (i) a prima facie case, (ii) balance of convenience, and (iii) irreparable loss or injury. In the present case, the plaintiff has failed to establish even the first requirement.

14. Further, under Section 52 of the Transfer of Property Act, the doctrine of lis pendens provides that any transfer of property made during the pendency of a suit shall not affect the rights of the parties to the suit as determined by the decree passed therein. Therefore, even if defendant No. 9 transfers the property, such transfer will be subject to the result of the present suit. Hence, adequate legal protection already exists.

15. In absence of any documentary proof, no prima facie case is made out. The balance of convenience also does not lie in favour of the plaintiff, as no immediate or substantial injury has been shown to exist. Therefore, no irreparable loss will be caused to the plaintiff if injunction is refused. Hence, I answered point No.1 to 3 is in the negative.

As to point No.4:-

16. In the present matter, plaintiff has failed to establish prima facie case and balance of convenience in their favour. Considering above facts, the application needs

to be rejected. Hence, I proceed to pass the following order.

ORDER

1. The application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is rejected.

Place – Karjat
Date - 17/11/2025

(Smt. A. S. Wadkar)
Civil Judge, J.D., Karjat,
District - Raigad