

CNR:MHRG07-001305-2021

:: ORDER BELOW EXH.05 IN REGULAR CIVIL SUIT
NO.130-2021 ::

Ramesh Narayan Dagade

...The plaintiff

Vs

Lalit Chandulal Oswal

...The defendant

01. This is an application under order 39 rule 1 and 2 of the Civil Procedure Code for the relief of temporary injunction restraining the defendant from causing obstruction and interference in the possession of the plaintiff over land survey no.2/1 of village Ladiwali, Tal-Karjat, Dist-Raigad ad-measuring 30.60 sq.mtr. (This property herein after shall be referred as the suit property which are described more particularly in para no.1 of the plaint) and also from alienating it. The plaintiff filed the present suit for the relief of declaration that, the agreement dated 15/12/2009 is binding on the defendant and sale deed dated 14/12/2009 is not binding on the plaintiff. He has also sought the relief of declaration of ownership and also the relief of perpetual injunction restraining the defendant from causing obstruction and interference in the possession of the plaintiff over the suit property and alienating it.

02. I have framed following points for determination alongwith my findings thereon as under.

Sr. No.	POINTS	FINDINGS
[1]	Does the plaintiff prove that there exists prima facie case in his favor ?	No
[2]	Does he further prove that balance of convenience lies in his favor ?	No
[3]	Does he further prove that, he will suffer irreparable loss if no order of injUNCTION is passed in his favor ?	No
[4]	What order ?	As per final order.

:: REASONS ::

As to point Nos.1 to 3 :-

03. It is the case of the plaintiff that, the suit property is ancestral property of the plaintiff. He is owner and possessor of it. In 2009, he was in need of Rs.3,00,000/-. He therefore borrowed the said amount from the defendant on interest and agreed to re-pay it at Rs.4,76,000/-. Therefore, on 14/12/2019 the plaintiff under the impression of mortgage executed a registered document with the defendant but the defendant by taking undue advantage of illiteracy of the plaintiff, got executed sale deed of the suit property. On 15/12/2009 the plaintiff

repaid Rs.1,50,000/- to the defendant and prepared the agreement on stamp paper of Rs.100/- In the said agreement, it is agreed between the parties that, the plaintiff shall repay to Rs.4,76,000/- till 14/12/2010 and the suit property will be re-transferred to the plaintiff. The plaintiff could not repay the amount in time but on 28/08/2015 he paid Rs.3,00,000/- to the defendant. To which the defendant issued a receipt of his shop only. The plaintiff also tried to pay remaining Rs.1,76,000/- but the defendant avoided to receive the said amount. On 06/10/2021 the defendant issued a notice asking the plaintiff to remove encroachment from the suit property. The notice of defendant is illegal and the transaction between both of them is of mortgage. The suit property is the only source of income to the plaintiff, if the defendant succeeds in dispossessing the plaintiff, he shall suffer irreparable losses. He therefore has finally prayed for temporary injunction restraining the defendant from causing obstruction over the suit property.

04. The defendant has resisted the application by filing his say below Exh.20. By denying all the averments in the application for temporary injunction, it is submitted that, the suit and the application is filed on false grounds. The alleged agreement dated 15/12/2009 is not binding on the defendant. The plaintiff has under valued the suit. The actual valuation of the suit is beyond the pecuniary limits of jurisdiction of this court. The plaintiff admits of executing the sale deed of the suit

property and therefore now he can not seek the sought reliefs. The suit being in respect of the sale deed of the year 2009, it is not in limitation. It is further submitted that the plaintiff has need in money therefore he executed sale deed of the suit property in favour of the defendant for a consideration of Rs.1,50,000/-. The plaintiff and his relatives had been to the defendant asking to re-transfer the suit property and accordingly the defendant also agreed for re-transfer as per agreement dated 15/12/2009 but the plaintiff could not repay the amount of consideration till 14/12/2010, on the contrary, the plaintiff again asked for Rs.15,000/- from the defendant and while receiving Rs.15,000/- he issued a receipt in favour of the defendant stating therein that the previous agreement is cancelled. The defendant is in possession of the suit property. Claim of plaintiff's possession over the suit property is false. The defendant has duly paid consideration for the suit property. If the order of injunction is passed against the defendant, he shall suffer irreparable loss. He therefore finally prayed for dismissal of the present application.

05. I have heard learned Advocates on behalf of respective parties. I have also gone through the entire record placed before me. Suit of the plaintiff is solely depending on the agreement dated 15-12-2009. Admittedly, the said document is not registered. On perusal of it, it can be seen that, the plaintiff was supposed to pay the amount of Rs.4,76,000/- to the

defendant on or before 14/12/2010. It is also admitted position of fact that, the plaintiff could not repay the said amount to the defendant as agreed within time. The plaintiff has filed a copy of receipt showing payment of Rs.3,00,000/-. The said receipt doesn't reflect as to who received Rs.3,00,000/-. The pleadings of the plaintiff in the plaint are also not specific so as to show that, he has paid the entire amount of Rs.4,76,000/- or he ready to pay the balance amount.

06. In order to seek the relief of specific performance of a contract, it is necessary that, the plaintiff should show his readiness and willingness to perform the contract. The agreement dated 15/12/2009 itself makes it clear that, the plaintiff shall have to complete his obligation of payment till 14/12/2010. The plaintiff doesn't bring it on record that, he has paid the entire agreed amount on the contrary, the present suit having filed in the year 2021, i.e. after 11 years of the last day of performance of the contract. The plaintiff nowhere shows as to how the present suit is within limitation. He filed the present suit when the defendant issued a notice on him for removal of encroachment. The said cause of action doesn't bring the enforcement agreement dated 15/12/2009 within limitation. The plaintiff also doesn't have the substantive evidence to show that, he has made payment of the entire agreement. Considering these things I am of the opinion that, the plaintiff has failed to prove existence of prima facie case in his favour. No balance of

convenience lies in his favour and no irreparable loss will be caused to him if no order of injunction is passed in his favour. Hence I togetherly answer point nos.1 to 3 into the negative.

As to point No.4 :-

07. In the case in hand, the plaintiff has failed to prove that, the agreement dated 15/12/2009 is binding on the defendant and is still enforceable. By considering my findings on point no.1 to 3, I am of the opinion that, the present application is liable to be rejected. Resultantly in answer to point no.4, I proceed to pass the following order.

:: ORDER ::

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

Karjat
Date:17/03/2022

(Manod V.Tokale)
Civil Judge, J.D.,Karjat.
Dist-Raigad.