

ORDER BELOW EXH. 5

The present application is filed for grant of temporary injunction under Order 39 Rule 1 of the Civil Procedure Code restraining defendant no.2 from paying the rent of the suit property to defendant no.1 till the final disposal of the suit.

The case of the plaintiffs in brief is as follows:-

2 . The plaintiff no.1 is the mother of defendant no.1. Plaintiff no.2 and 3 are sisters of defendant no.1. Plaintiff no.4 is the brother of defendant no.1. Husband of plaintiff no.1 and father of plaintiff no.2 to 4 and defendant no.1, Sitaram Pawar was the owner and possessors of the property (Hereinafter referred to as "suit property" for sake of brevity) as follows :-

Location	Gat No.	Hissa No.	Area
Mouje Kandhroli- Boreti, Tal. Khalapur, Dist – Raigad	28	2/A	100.3 Gunthe

3 . After the death of Sitaram Pawar, the suit property came in possession of the plaintiffs and defendant no.1. On 15.12.2014, Defendant no.1 executed lease deed for 60 gunthe out of the suit property, in favour of defendant no.2 for cultivation of flowers. It is

averred by the plaintiffs that the lease deed was drafted in English. Plaintiff nos.1 to 3 are illiterate due to which they were not able to read it. Defendant no. 1 told plaintiff nos.1 to 3 that there is a government scheme in which they have to cultivate plants in their property for which the government will give huge grants. For this, the documents are to be drafted in English and it is to be executed at Khalapur register office and before Tehsildar. Therefore, plaintiff nos.1 to 3 signed the documents without reading it. Plaintiff no.4 was told that the rent will be deposited in the account of plaintiff no.1 due to which plaintiff no.4 also signed the agreement.

4. In the year 2016, Plaintiff no.1 came to know that the suit property is rented for ten years. The deposit of Rs.1,00,000/- is paid through cheque to defendant no.1 by defendant no.2. It was written in the lease deed that a rent of Rs.22,000/- will be paid to defendant no.1 only. It was also mentioned that the rent will increase to Rs.24,200/- after two years from the date of lease deed and Rs.26,700/- after four years.

5. Plaintiff no.1 was cultivating the rice crop on the suit property. The defendant no.2 has restrained plaintiff no.1 from cultivating the suit property due to which her sole source of income came to a halt. Plaintiffs are deprived of the rent earned from the suit property. Hence, they filed the present application for temporary injunction.

6. Defendant no.1 filed say at Exh.36 and denied the averments of plaintiffs. Defendant no.1 contended that it is mentioned in the lease deed that the rent is to be given to him and plaintiffs had

knowledge about it. Therefore, plaintiffs have signed on the receipt of deposit. The deposit of Rs.1,00,000/- was utilized by defendant no.1 for medical and other expenses of the plaintiffs. If the injunction is granted, there will be irreparable loss to the defendants. Therefore, he prayed to reject the application.

7. Defendant no.2 filed say at Exh.23 and contended that the dispute is between the plaintiffs and defendant no.1. He is not concerned with the dispute. He is ready and willing to deposit further lease rent as per the directions of the Court.

8 . Perused application and say. Heard learned advocates for both the sides. The learned advocate for the defendants has relied on *Best sellers retail (India) Pvt.Ltd. Vs. Aditya Birla Nuvo Ltd & Ors. [2012 (5) Mh.L.J]*. It was held by the Hon'ble Apex Court that Court can refuse temporary injunction, if the injury suffered by the plaintiff on account of refusal of temporary injunction is not irreparable.

9. Following point arose for the determination and findings thereon alongwith reasons are as under:

Sr. No.	Points		Findings
1.	Whether the Plaintiff made out prima facie case?	..	Yes.
2.	Whether plaintiff proves that balance of convenience lies in his favour?	..	Yes.
3.	Whether plaintiff proves that he will suffer irreparable loss and	..	Yes.

	hardship ?		
4.	What order?	..	Application is allowed

REASONS

POINT NO. 1 to 3 :-

10 . In support of the contentions, the plaintiffs relied upon following documents –

7/12 extract of the suit property dated 09.08.2016, death certificate of Sitaram Pawar, certified copy of lease deed dated 15.12.2014, copy of notice sent by plaintiffs dated 24.10.2016, copy of reply to notice from defendant no.1 dated 3.12.2016, copy of reply to notice by defendant no.2 dated 11.11.2014.

11 . In support of the contentions, the defendants relied upon following documents –

7/12 extract of the suit property dated 2.11.2015, copy of mutation entry dated 2.11.2015, photographs of the suit property, 7/12 extracts of gat no.140, 434 and 28/2/B.

12 . Considering the submissions, documents and photographs on record, it is observed that the plaintiffs has challenged the lease deed dated 15.12.2014. 7/12 extracts of the suit property shows that the plaintiffs and defendant no.1 are in joint possession. The suit property is joint family property. There is nothing on record to show that there was

partition by metes and bounds. On perusal of the lease deed, it shows that the rent is to be paid in the name of defendant no.1. If the lease deed is read as a whole, the intention of the parties of the parties can be made out. It seems that all the lessors, i.e, plaintiffs wanted to get the benefit of the rent, though it is paid in the name of defendant no.1 only. Whether the plaintiffs consent was obtained by misrepresentation is the subject matter of trial. Defendant no.1 has not filed any documents to show that the rent is divided between him and plaintiffs. Hence, plaintiff has made out a prima facie case.

13 . In this situation, the plaintiffs have every right to object the lease deed. Defendant no.2 is ready and willing to pay the rent as per the order of the Court. The validity of the lease deed is challenged. If the payment of rent is continued to defendant no.1, and the suit is decreed, it will cause complicity in the matter. Therefore, the balance of convenience is in favour of plaintiffs. If the injunction is not granted there is possibility of plaintiffs being deprived from enjoying the fruits of their suit property which will cause an irreparable loss to the plaintiffs. In this situation, it is necessary to direct defendant no.2 to deposit the rent in the Court till further orders. Accordingly, I answer point no. 1 to 3 in the “Affirmative”.

POINT NO. 4

14 . In the light of above discussion, as the plaintiff has proved the prima facie case. In the result, I pass the following order.

ORDER

- 1 . The application is allowed.
- 2 . Defendant no.2 is directed to deposit the rent of the suit property, in the Court till further orders.
3. Depositing of the rent in the Court will start from August, 2018.
4. Costs in cause.

Khalapur,

(S.M.Gade)

Date : 17.07.2018

Civil Judge, J.D., Khalapur

