

ORDER BELOW EXH. 5 IN REGULAR CIVIL SUIT No.21/2014.

- 1) This is an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure for grant of temporary injunction.
- 2) Heard learned counsels for the plaintiffs. Also perused application, affidavit and documents filed on record.
- 3) In view of rival pleadings of the plaintiffs and documents on record, following points arise for my determination. I have recorded my findings thereon for the reasons stated below :

<u>Points</u>	<u>Findings</u>
1} Whether plaintiffs have made out <i>prima facie</i> .. case for grant of temporary injunction in their favour ?	In affirmative.
2} Whether balance of convenience lies in favour .. of plaintiffs ?	In affirmative.
3} Whether plaintiffs will suffer irreparable loss if .. injunction application is rejected ?	In affirmative.
4} What order ?	.. Application Exh. 5 is allowed.

REASONS

As to Points No. 1 to 4 :-

4) It is the contention of the plaintiffs that they are the owner and possessor of gut no.805 admeasuring 15-95-2 situated at Mauje Pahur, Tal.Roha, Dist.Raigad and to support their contention they have filed xerox copy of 7 x 12 extract of gut no.805. Further, they have filed xerox copies of mutation entries. It is their further contention that, out of said property 0-80-0 area is in respect of which suit is filed. (Hereinafter referred as suit property) It is their further contention that, special Civil Suit bearing no.190/08 was filed at Alibag Court and it was decided on 15/7/11 in favour of plaintiffs. It is their further contention that, they were having some financial difficulty and therefore, they decided to sale suit property and accordingly defendant nos.3 to 6 acted as a mediator and asked plaintiffs to execute sale deed in favour of defendant no.1. It is their further contention that, defendant no.2 as a power of attorney of defendant no.1 and defendant nos.3 to 6 came to the plaintiffs and it was agreed the consideration amount Rs.1,50,000/- per acre and consideration amount of suit property was fixed as 3,00,000/-. It is their further contention that, it was told to plaintiffs that consideration amount will be paid in cash on the date of execution of sale deed. It is their further contention that, on 22/9/11 sale deed was executed in favour of defendant no.1 through defendant no.2 as a power of attorney. The said sale deed is bearing no.2995/11. It is their further contention that, it was told to the plaintiffs that they will hand over cheque to their house. To support they have filed certified copy of sale deed on record. It is their further contention that, though sale deed was executed on 30/8/11 defendants failed to pay and avoided to pay consideration amount and therefore, notice was sent to defendants on 28/10/13 and 10/11/13 through advocate. It is their further contention that, despite of receipt of notice defendants failed to pay the consideration amount of

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said sale deed and therefore, plaintiffs have to file present suit to declare that sale deed is without consideration and plaintiffs are owner of the suit property and further to seek declaration that said sale deed is not binding on them. It is further argued that they have made prima-facie case and balance of convenience is in their favour. If defendants are not restrained from obstructing enjoyment and possession of the plaintiffs over the suit property irreparable loss will cause to them. Hence, defendants may be restrained from obstructing possession and enjoyment over the suit property.

5) Perused application and documents on record. Heard Ld. Advocate for the plaintiffs. On perusing record it appears that plaintiffs have sold suit property to the defendant no.1 through defendant no.2 as a power of attorney for the consideration of Rs.3,00,000/-. It is their further contention that, though sale deed is executed on 30/8/11 till date they have not received consideration. In order to support their contention they have filed certified copy of sale deed, 7 x 12 extract and copies of mutation entries in respect of suit property on record. It is pertinent to note that in the present matter defendants appeared in the matter but failed to file their say or W.S. Hence, matter was ordered to proceed without say ad W.S. against defendants. As contention of plaintiffs have remained unchallenged at this stage and despite of given opportunity they failed to file their say and contest the application, I have no hesitation to hold that plaintiffs have made out prima-facie case and balance of convenience is also in their favour. Further, if defendants are not restrained from obstructing, possession and enjoyment of plaintiffs over suit property, plaintiffs may suffer irreparable loss. Hence, I answer the point Nos. 1 to 3 in the affirmative and in answer to Point No. 4, I proceed to pass following order.

ORDER

- 1) Application at Exh. 5 is hereby allowed.
- 2) Defendants or their servant or agent or power of attorney holder or anybody on their behalf are restrained temporarily from obstructing enjoyment and possession of the plaintiffs over suit property till disposal of suit, without following the due process of law.
- 3) Cost in cause.

Date :- 22/11/2014.

Place :- Roha.

(**S. S. Shinde**)
Civil Judge, Jr. Dn., Roha.