

ORDER BELOW EXH. 5 IN R.C.S. No. 13 OF 2014

The plaintiffs have filed the present application to restrain the defendant no. 1 from transferring the suit property and creating any third party interest in the suit property.

2. The plaintiffs contended that the suit property was purchased by one Dagadu Ganpat Sutar by virtue of section 32 G of the Bombay Tenancy and Agricultural Lands Act vide mutation entry no. 140. After his death, the defendant nos. 2 to 4 and Sangita Dagadu Sutar became the legal heirs vide mutation entry no. 1847. The plaintiffs and Sakharam Baburao Mande, Shankar Tukaram Munde and defendant no. 1 proposed to form one Jaikishan Co-operative Housing Society Limited at Nadgaon in November 1989. The defendant nos. 2 to 4 and Sangita Dagadu Sutar obtained permission from the Sub Divisional office on 06/04/1995 to sell the suit property to defendant no. 1. The defendant no. 1 was proposed to be its promoter. The defendant nos. 2 to 4 and Sangita Dagadu Sutar executed an agreement of sale on 09/10/1989 in that regard through defendant no.1 as the promoter against earnest money of Rs. 10,000/-

Subsequently, the sale deed was executed on 24/11/1995 by defendant nos. 2 to 4 and Sangita Dagadu Sutar in favour of defendant no. 1. The name of defendant no. 1 was mutated accordingly. The plaintiffs had faith in defendant no. 1. Hence the sale deed was executed in the name of defendant no. 1. All the documents regarding the proposed society are in custody of plaintiff no. 1. The society could not be registered but the suit property is owned by the plaintiffs and defendant no. 1. The

defendant no. 1 is trying to sell the suit property.

Hence prayed to allow the application.

3. The defendants resisted the application vide his say at Exh. 19. The defendant no. 1 contended that the description of the property is not sufficient to identify it or not sufficient to be identified by boundaries or survey numbers and is thus hit by Order VII Rule 3 of the Code of Civil Procedure.

The plaintiffs have never applied to the Sub Registrar, Co-operative Society for formation of any such proposed society. The plaintiffs ought to have filed the suit in the Co-operative Court.

The defendant no. 1 is the owner and possessor of the suit property. The plaintiffs have instituted the suit after a period of nineteen years. The defendant no. 1 is paying all the taxes of the suit property. The plaintiffs have never purchased the suit property. There is no cause of action for institution of the present suit either.

Hence prayed for rejection of the application.

4. On rival contentions raised by the parties to the suit, following points arise for my determination on which the findings are recorded along with the reasons as under :-

Sr. No.	Points	Findings
1)	Whether the plaintiff has made out a prima facie case?	No
2)	Whether balance of convenience tilts in favour of the plaintiff?	No
3)	Whether the plaintiff will suffer irreparable loss if injunction is refused?	No

4)	What order?	The application is rejected.
----	-------------	------------------------------

REASONS

As to point nos. 1 to 3 :

5. Since all the points are interlinked, they are taken together to avoid repetition of discussion of evidence.

At the stage of deciding an application for temporary injunction, three parameters i.e. prima facie case, balance of convenience and irreparable loss are to be considered.

6. The plaintiffs has filed certain documents at Exh. 3. The mutation entry no. 1540 in the record of rights explicits that the suit property was transferred to Dagadu Ganpat Sutar by virtue of Section 32 G of the Bombay Tenancy and Agricultural Lands Act while mutation entry no. 1847 explicits that after the demise of said Dagadu Ganpat Sutar the names of the defendant nos. 2 to 4 and Sangita Dagadu Sutar were mutated as his legal heirs.

7. The plaintiffs submitted that the plaintiffs and defendant no. 1 proposed to form one Jaikishan Co-operative Housing Society Limited (hereinafter referred to as "the said proposed society") and a resolution (Exh. 3/11) was passed on 24/09/1989 between the plaintiffs and defendant no. 1 authorising defendant no. 1 as the promoter of the said proposed society. Another resolution. (Exh. 3/7) on the same day was passed to see that a savings bank account is opened in the name of the said proposed society. The permission for the same was sought from the Sub

Registrar Co-operative Society, Mahad. In accordance with it, the letter (Exh. 3/8) was issued on 04/10/1989 by the Sub Registrar Co-operative Society, Mahad permitting the same. On perusal of the said letter (Exh.3/8), it appears that the Sub Registrar Co-operative Society, Mahad instructed the plaintiffs to file the documents for formation of the said proposed society within sixty days. However they didn't. The Sub Registrar, Co-operative Society, Mahad also intimated in the said letter that such permission would not construe to giving of the permission for the registration of the said proposed society.

8. Thereafter it reveals that an agreement to sell (Exh. 3/9) was executed on 09/11/1989 by the defendant nos. 2 to 4 and Sangita Dagadu Sutar through defendant no.1. The plaintiffs relied on the receipts (Exh. 29/1) tendered from time to time by the defendant nos. 2 to 4 and Sangita Dagadu Sutar in the name of the said proposed society. It would be pertinent to mention here that the said proposed society was not formed and both the parties have admitted the same.

9. Subsequently the defendant purchased the suit property from defendant nos. 2 to 4 and Sangita Dagadu Sutar vide sale deed no. 901 of 1995 from defendant nos. 2 to 4 and Sangita Dagadu Sutar on 24/11/1995 for a consideration amount of Rs. 47,000/-. The said transaction is mutated accordingly vide mutation entry no. 2423 in the record of rights. The plaintiffs filed the original sale deed at Exh. 3/10 as well as the 7X12 extract dated 28/10/2013 at Exh. 3/1.

10. The defendant no. 1 submitted that he is the owner and possessor of the suit property as on date today. The sale deed (Exh. 3/10) and the 7 X 12 extract (Exh. 3/1) depicts the same.

11. In *Vyankati Radhobaji V/s Varsh Vinod Deshpande* 2005(2) All MR 157, it has held that the temporary injunction cannot be granted against the true owner.

12. Prima facie case means the existence of circumstances justifying the trial of the questions of facts and law raised in the litigation. The plaintiffs were required to establish that in the event of non interference by the Court there will be irreparable injury and substantial loss caused.

13. As the revenue record stands in the name of defendant no. 1 and as the plaintiffs have failed to prima facie show the execution of the agreement ended in formation of the society, it is concluded that the plaintiffs have failed to prove prima facie that they are in possession of the suit property. So also due to this fact, the plaintiffs would not suffer any irreparable loss greater than that suffered by the defendants and therefore the balance of convenience does not lie in favour of the plaintiffs.

Hence findings to point nos. 1 to 3 are answered in the negative.

As to point no. 4 :-

In the background of reasons to findings to point nos. 1 to 3, the application is devoid of merits.

Accordingly, the following order is passed:-

ORDER

- 1) The application (Exh. 5) is hereby rejected.
- 2) Parties to bear their own costs.

Mahad.

(J.T. Koregaonkar)

Date:

Jt. C.J.J.D., Mahad.