

: ORDER BELOW EXH.5 :

(Passed on 05.08.2014)

1) This is an application filed by plaintiff for temporary injunction as per Order XXXIX, Rule 1 & 2 of Code of Civil Procedure. The plaintiff's case is as follows :-

That the plaintiff is owner of block no.4 admeasuring 148 sq.ft. in building namely 'Aayodhya Complex' at Mahad and which is here-in-after referred as 'suit property'. The plaintiff purchased the suit property from one Shekhar Ramlal Sheth. The plaintiff is in possession of the suit property and runs his business of printing press therein.

2) Plaintiff knows defendant. The plaintiff was in need of Rs.2,00,000/- for his business of printing press. Plaintiff demanded Rs.2,00,000/- to the defendant. Defendant agreed to pay hand loan amount, however demanded that plaintiff should execute mortgage-deed. Accordingly, it was agreed that plaintiff will execute mortgage-deed of suit property for the security of the loan. However, the stamp vendor told the plaintiff and defendant that the mortgage-deed of the suit property cannot be executed. Therefore, it was agreed between plaintiff and defendant that plaintiff will execute the sale-deed of suit property as a security for the loan amount.

3) It was agreed that, defendant should cancel the sale-deed on receipt of his money. Accordingly, the sale-deed was executed. However, in January 2014 plaintiff came to know

that, defendant mutated his name to the assessment list of Municipal Council. Despite plaintiff's demand, defendant refused to set aside the sale-deed as agreed. Hence, plaintiff has filed the suit for cancellation of the sale-deed and for injunction. By present application plaintiff sought temporary injunction that, defendant should not obstruct his possession in the suit property and should not transfer or create interest in the suit property.

4) The application is resisted by defendant by filing his say at exh.24. It is contended by defendant that, he purchased the suit property from the plaintiff. He paid Rs.2,00,000/- towards the consideration. The transaction is of sale and not of mortgage as alleged by the plaintiff. It is further contended by the defendant that, he is in possession of the suit property since the date of purchase. If injunction is granted against him, it will be injunction against true owner. It is further contended by defendant that allowing application would amount to decreeing the suit before trial. Hence, application be rejected.

5) Heard Adv. Dawrung for the plaintiff and Adv. Shri. Sable for the defendant. Following points arise for my determination and I record my findings thereon for the following reason.

Points

Findings

1) Does plaintiff prove *prima facie* case for grant of temporary injunction ?

No.

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| 2) | Does plaintiff prove that balance of convenience lies in his favour ? | No. |
| 3) | Does the plaintiff prove that he will suffer irreparable loss if injunction is not granted ? | No |
| 4) | What order ? | Application is rejected. |

: R E A S O N S :

As to Points No. 1 to 4

6) Adv. Dawrung submitted that, vide sale-deed bearing no. 274/2009 plaintiff purchased the suit property from Shekhar Ramlal Sheth. Plaintiff is carrying his business of printing press in the suit property. Plaintiff knows defendant. Plaintiff was in need of money for his business purpose.

7) Adv. Dawrung submitted that, plaintiff demanded Rs.2,00,000/- to the defendant. Defendant agreed to pay the amount, however demanded that plaintiff should execute mortgage-deed of the suit property as a security for loan amount. It was agreed between plaintiff and defendant that, plaintiff will execute mortgage-deed as a security for the loan amount. However, the stamp vendor told the parties that, mortgage-deed of the suit property cannot be executed. Therefore, it was agreed that plaintiff will execute the sale-deed of the suit property as a security for the loan and on receipt of

the loan amount defendant will cancel the said sale-deed.

8) Adv. Dawrung submitted that, accordingly sale-deed was executed for the security of the money, which defendant paid to the plaintiff. In the month of January-2014 when plaintiff asked the defendant to receive his money back and cancel the sale-deed, defendant denied it. On the contrary, defendant got his name mutated on the assessment list of Municipal Council. Adv. Dawrung submitted that, though sale-deed is executed by plaintiff in favour of defendant, the said sale-deed is executed as a security for the money. Plaintiff never handed over possession of the suit property to the defendant. Plaintiff is carrying his business of printing press in the suit property.

9) Adv. Dawrung submitted that, after filing of the suit defendant removed the printing press machineries from the suit property. Plaintiff has lodged report about it to the police station and filed criminal complaint in the Court. Adv. Dawrung submitted that, plaintiff has produced on record the photographs showing that plaintiff is in possession of the suit property. If injunction as prayed is not granted, plaintiff will suffer irreparable loss. Balance of convenience is in favour of plaintiff. Adv. Dawrung submitted that, temporary injunction order be passed against defendant not to obstruct the plaintiff's possession in the suit property and not to transfer or create interest in the suit property.

10) Adv. Shri. Sable for the defendant submitted that, it is undisputed fact that, originally the suit property was owned by plaintiff. The plaintiff was in need of money as he was running loss in his business. Plaintiff agreed to sell the suit property to the defendant. Defendant paid Rs.2,00,000/- towards consideration. On 16.03.2011 plaintiff executed sale-deed in favour of the defendant. Adv. Shri. Sable submitted that, the sale-deed is produced on record by the plaintiff. On going through the sale-deed it becomes clear that, on the date of sale-deed itself possession of the suit property was handed over by plaintiff to the defendant. The defendant became owner and possessor of the suit property.

11) Adv. Shri. Sable submitted that, defendant is in possession of suit property as owner. If injunction as claimed by the plaintiff is granted, it will be an injunction against the true owner. Adv. Shri. Sable submitted that, since the plaintiff is not concerned with the suit property, he cannot claim any relief against defendant. Adv. Shri. Sable submitted that, there is nothing on record to show that, plaintiff executed mortgage-deed in favour of the defendant. On the contrary, the instrument produced on record is of sale and the case of the plaintiff is against the document produced on record.

12) Adv. Shri. Sable submitted that, this is not stage to draw inference as to what is the nature of the document. If it is so inferred, it will amount to decreeing the suit finally and without trial. Adv. Shri. Sable submitted that, the defendant has

produced on record the photographs showing that, defendant is in possession of the suit property. If injunction is granted as prayed, defendant will suffer irreparable loss. Balance of convenience lies in favour of the defendant. Hence, application be rejected.

13) Adv. Shri. Sable in support of his submission relied upon the judgments of Hon'ble Bombay High Court in the cases of Vyankati Raghobaji Parbat & Anr. Vs. Sau. Varsha Vinod Deshpande & Anr., reported in 2005(2) ALL MR 157, Maharashtra Jeevan Pradhikaran through its Member Secretary & Anr. Vs. M/s. Lark Construction Pvt.Ltd., reported in 2005(1) ALL MR 479, Shri. Cutchi Visa Oswal Derawasi Jain Pathshala Vs. Sri Cutchi Visha Oswal Derawasi Jain Mahajan & anr, reported in 2005(1) ALL MR 484 and Baburao Ganpati Mali Vs. Balasaheb Anna Patil & Anr., reported in 2007(2) ALL MR 364.

14) Considering the arguments advanced for both sides it appears that, it is not in dispute that plaintiff purchased the suit property from one Shekhar Ramlal Sheth. The real dispute is regarding the nature of transaction that took place between plaintiff and defendant. According to the plaintiff the sale-deed is executed for the security of the money, which defendant advanced to the plaintiff. It is the case of defendant that, plaintiff sold suit property to him and it was not at all agreed that sale-deed is executed as a security for the money.

15) The disputed sale-deed is produced by plaintiff on

record. On going through the instrument it appears that, the instrument is of sale and there is no recital in the instrument that the sale-deed is executed for securing the loan amount. According to plaintiff he never handed over possession of the suit property to the defendant. However, it is mentioned in the sale-deed that the possession of the suit property is handed over to the defendant. In such circumstances, it appears that the case of plaintiff is against the contents of the instrument.

16) According to the plaintiff, despite execution of the instrument he retained possession of the suit property with him. The said averment is also against the recitals in the instrument. The plaintiff has produced on record photographs for showing that, he is in possession of the suit property. Photographs are also produced by the defendants showing that he is in the possession of the suit property. I am of view that, the photographs cannot be relied upon to draw an inference regarding the possession. Drawing an inference at this stage that plaintiff executed sale-deed for securing the loan amount, will amount to drawing inference before the trial. The instrument produced on record shows that, plaintiff executed sale-deed in favour of the defendant and handed over possession of the suit property to him. *Prima face* it appears that, defendant is owner of the suit property and injunction cannot be granted against true owner. I am of view that, if injunction, as prayed, is granted, the defendant will suffer irreparable loss. Balance of convenience is in favour of the defendant. I am of

view that, plaintiff failed to prove *prima facie* case for granting injunction. Hence, I answer points no. 1 to 3 in the negative and in answer of point no.4, pass following order.

: O R D E R :

- 1) Application is rejected.
- 2) Cost of the application is in main cause.

(Dictated and pronounced in open Court)

Mahad.
Date : 05.08.2014

(B. D. Pawar)
Civil Judge, J.D., Mahad.