

R.C.S. NO. 124 OF 2016
Vasant Dhawan Vs.
Anant Bhawan

ORDER BELOW EXHIBIT 23 IN RCS NO. 124/2016
(Decided on 03/03/2017)

The plaintiffs presented this application for granting an ex-parte temporary injunction against the defendant Nos. 2 to 4. Perused the application and documents submitted alongwith it and other proceedings. Heard Ld. Advocate for the plaintiffs Shri. V.U. Ghayal.

2. The plaintiffs submitted that the defendant No. 1 and him agreed to sell the suit property to the defendant Nos. 2 to 4. Accordingly on 06/05/2014 the registered Agreement to sell No. 1384/2014 was executed with respect to Survey No. 88(Old Survey No. 348) Hissa No. 2C between the plaintiffs and the defendants. The name of the plaintiffs were included in the registered agreement to sell dated 06/05/2014 as consenting party. It was agreed between the parties to give Rs. 2,00,000/- to the plaintiff No. 1, Rs. 400000/- to the plaintiff No. 2 as consideration amount. But the plaintiff Nos. 1 and 2 did not receive any consideration amount from the defendants. Therefore the alleged registered agreement to sell is not binding upon the plaintiffs. The plaintiffs have undivided share in the suit property though the 7x12 extract of the suit property shows the name of the defendant No. 1 in the column of cultivators.

3. The plaintiff further submitted that on 25/02/2017 the defendant Nos. 2 to 4 illegally entered into the suit property and

started the construction of the road and building upon the same. The suit properties are agricultural land. Without obtaining necessary permission from the concerned authority the defendant Nos. 2 to 4 have started construction upon the suit property. Despite convincing the defendant Nos. 2 to 4 to stop the construction upon the suit property they denied the right of the plaintiffs in the suit property. Therefore by this application the plaintiff has prayed for granting ex-parte ad-interim injunction against the defendant Nos .2 to 4 restraining them from carrying out construction in the suit property.

4. In order to support his claim the plaintiffs have filed the affidavit, the photographs of the alleged suit property and the receipt of the bill of the photographs. After perusing the photographs on record it appears to me that the alleged suit property have been demarcated with small cement polls. It appears that the construction of the road has begun near the alleged suit property. The stones and the sand seems to be laid upon the alleged suit property and they are visible from the submitted photographs. It shows that the construction is about to begin upon the suit property. The Agreement to sell produced on record shows the name of the plaintiff Nos. 1 and 2 as consenting parties to the agreement. The plaintiffs instituted this suit for partition of the suit property. According to him the property is joint family property and he has undivided share in the suit property. Only because the name of the defendant No.1 has been recorded to the revenue records of the suit property that does not mean that he lost his share in the suit property. They have not received the consideration amount agreed

between them and the defendant Nos. 2 to 4. Taking into consideration the averments made by the plaintiffs it prima facie appears that he has an arguable case in his favor. There is substantial question involved in the suit which needs detailed investigation. If the defendant Nos. 2 to 4 are allowed with continuation of the construction the right of the plaintiffs may be jeopardized. The plaintiffs have shown emergency in the suit. There is strong case for trial which needs investigation and decision on merits. There are extra ordinary circumstances arose in this case. If the application is disallowed it may create multiplicity of proceedings in future and it will cause irreparable loss to the plaintiffs. The plaintiff has shown that he will suffer inconvenience and hardship if the application is rejected. The defendant Nos. 2 to 4 are required to restrain from interfering with the possession of the suit property. If any delay occurs in grant of injunction such delay shall defeat the purpose of granting injunction.

5. Considering above factual position, I pass the following order,

ORDER

The application is allowed.

Issue ex-parte temporary injunction against the defendant Nos. 2 to 4, their agents, assigns and any other person on their behalf restraining them from continuing with the construction upon the suit property and further interfering in the possession of the same till they appear and file their say to the application of temporary injunction.

Issue show cause notice to the defendant as to why ex-parte injunction should not be continued till further order or specified time, returnable on 10/04/2017.

Special bailiff is allowed.

Emergent process is allowed.

The plaintiffs shall comply with the provisions of Order 39 Rule 3(a) of the Code of Civil Procedure.

Mangaon.

Date:- 03/03/2017

(G.S. Hange)

Jt. Civil Judge J.D. Mangaon.