

ORDER BELOW EXH. 5 IN R.C.S. NO. 27 / 2010

The plaintiff has preferred this application under Order 39 Rule 1 and 2 for grant of temporary injunction against the defendant no.9. Heard learned advocates for both parties. Perused documents on the record.

3) Following points arose for determination and I have recorded findings for them alongwith the reasons as under : -

POINTS**FINDINGS**

- | | | | |
|-----|---|----|----------------------|
| 1 . | Whether the plaintiff has prima facie case ? | .. | Yes |
| 2 . | Whether balance of convenience lies in favour of the plaintiff ? | .. | Yes |
| 3 . | Whether irreparable loss will be caused to the plaintiff if temporary injunction is not granted in his favour ? | .. | Yes |
| 4 . | What order ? | .. | Application allowed. |

REASONS

AS TO POINT NO.1 to 3 -

4) The present suit is filed for declaration and permanent injunction in respect of flat no. 204, B wing, 2nd floor in newly constructed building. (herein after referred to as the 'suit premises'). Deceased Janakibai Aayare was mother of Plaintiff and the defendant no. 1 to 5. She was tenant room no.5 on southern side of Uran Municipal Corporation House no. 582. (hereinafter referred to as the 'tenanted premises'). Defendant no. 6 to 8 are original owners of the tenanted premises. Defendant no. 9 is the developer of House no. 582. The Suit premises was allotted in lieu of tenanted premises. Janakibai was died on 23.07.2008.

5) According to the plaintiff, after demise of Janakibai, it was the question before the defendant no. 6 to 9 as to who can be considered as tenant out of the heirs? Therefore, the defendant no. 9 filed Civil Misc. Application no. 39/2009 praying before the court as to whom they should consider as the tenant. However, said application was withdrawn vide pursis below exhibit – 20 in which it was stated that the defendant no.1

has taken responsibility of other defendants. Now, it is the apprehension of the plaintiff that the defendant no. 9 may hand over possession to the defendant no.1. Hence, this application.

6) The plaintiff has relied upon pursis filed by the defendant no.9 in Civil Misc. Application no. 39/2009. Perusal of pursis shows that the defendant no.1 taken responsibility his brothers and sisters. Further, he relied upon address proof of the defendant no. 1. On the contrary, the defendant no.1 relied upon rent receipts, voters list, various bills in respect of the tenanted premises. At this juncture, it was argued on behalf of the defendant no. 1 that he handed over possession of the tenanted premises to the defendant no. 9. He relied upon one “Kabja Pavati” (Possession receipt) dated 17.06.2009. Though, Possession receipt is in the name of defendant no. 1, it can not be said that he is only entitled for the suit premises. The learned advocate for the defendant no. 1 further argued section 7 (15)(d) of the Rent Act that who can be the tenant. It is necessary to mention that the issue, before the court at this stage, is not as to who is the tenant? Therefore, definition of the Tenant under the Maharashtra Rent Control Act, 1999 and interpretation of the word “member” in the definition can not be considered at this stage.

7) There is no dispute about following facts -

- Janakibai was the tenant of the tenanted premises.
- Suit premises is allotted in lieu of tenanted premises.
- The plaintiff and the defendant no.1 to 5 are heirs of deceased Janakibai.
- Possession of the suit premises is with the defendant no. 9.

Perusal of say of defendant no. 2 to 5 demonstrates some peculiar facts as to what would have happened. According to the defendant no. 2 to 5, only plaintiff or only defendant no. 1 can not claim suit premises. Considering relationship between the plaintiff and the defendant no. 2 to 5, I am of the opinion that neither the plaintiff nor the defendant no.1 can alone have right in the suit premises. If the possession of the suit premises is given to the defendant no. 1 alone, it will certainly cause irreparable loss to the plaintiff and the defendant no. 2 to 5. However, no loss or prejudice will be caused to the defendant no.9 against whom temporary injunction is prayed. Hence, point nos.1, 2 and 3 are answered in the affirmative.

Considering the findings below point no.1, 2 and 3, the application below Exh.5 deserve to be allowed. Hence, following order -

– **ORDER** -

- i) Application is allowed.
- ii) The defendant no 9 is hereby restrained from giving possession of flat No. 204, B wing on second floor of newly constructed suit building to the defendant no 1/1 to 1/3 till final decision of this suit.
- iii) Cost in cause.

Date : 07/01/2016

(S.S.Jain)
Jt. Civil Judge Junior Div., Uran