



Order below Exh.5 in R.C.S.56/2023
(Bhagyashree Phalke Vs. Dattatray Kadam & Anr.)
(CNR NO.MHSN020003792023)

The present suit has instituted by plaintiff for perpetual injunction in which she has preferred this application under Order 39 Rule 1 and 2 r/w. Section 151 of the Code of Civil Procedure for restraining defendant No.2 from initiating or conducting any procedure as to attachment of suit property.

2. It is the case of plaintiff that the property admeasuring 516.82 Sq.Mtrs. out of 41315.8 Sq.Mtrs situated in Survey No.13 bearing Grampanchayat property No.1266/1B situated within the local limits of Budhgaon Grampanchayat is the subject matter of present suit. (hereinafter referred to as 'suit properties').

3. According to plaintiff, the said property was purchased by her from Mr. Amit Gopalrao Patwardhan who was the power of attorney holder for Smt. Vijayadevi Satishchandra Nisal and Manasi Rajiv Kher on 30.10.2015 vide registered document No.2716/2015. Since then, the said property has been possessed by her and she has constructed a wedding hall over the said property. The defendant No.1 also owns the property in City Survey No.13, however there is slight difference in the boundaries of property possessed by plaintiff as well as defendant No.1 respectively. Therefore, properties of plaintiff and defendant No.1 are independent and separate. The defendant No.1 has purchased her property from Smt. Smitadevi Gopalrao Patwardhan, Amitraje Gopalrao Patwardhan and Manasi Raji Kher on 04.04.2014 vide registered document No.1674/2014. Defendant No.1 mortgaged his property with ICICI Home Finance Ltd., Vishrambag, Sangli. However, he did not redeem the said mortgage.

Therefore, defendant No.2 i.e. ICICI Home Finance Ltd., initiated proceeding against defendant No.1 for attachment of property under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act'). However, since defendant No.2 did not find the property of defendant No.1 in place and since the boundaries of properties of plaintiff as well as defendant No.1 are almost similar, it started the proceedings to attach property of plaintiff. In such case, plaintiff has apprehension that defendant No.2 may forcefully and unlawfully dispossess her from the said property. It will cause damage which cannot be compensated in terms of money. The prima-facie case, balance of convenience and greater hardship are in favour of plaintiff. Accordingly, prayed for prohibiting defendant No.2 from initiating or conducting any procedure as to attachment of suit property.

4. Defendant No.1 filed his written statement cum reply to Exh.5 at Exh.20. He denied all the claims of plaintiff. According to him, the property which was sold by Smt. Smitadevi Patwardhan, Amit Raje Gopal Patwardhan and Manasi Rajiv Kher to present defendant on 04.04.2014 was itself subsequently sold by them to plaintiff by making slight difference in the boundaries. The plaintiff is seeking the ownership rights by said fictitious sale deed. Defendant No.1 admitted that he has mortgaged the said property to defendant No.2, however he denied that his property is not in place. The properties mentioned by plaintiff are not separate but same and identical with each other. Accordingly, plaintiff is trying to grab the property of defendant No.1 illegally and fraudulently by claiming ownership over there.

5. Defendant No.2 filed its the written statement cum reply to Exh.5 at Exh.31. It also denied the claims of plaintiff. According to it, the

suit property is not sufficiently identifiable. The properties of plaintiff and defendant No.1 are almost same subject to a slight change in the northern side boundaries. The sale deed of plaintiff is subsequent to that of defendant No.1. Therefore, plaintiff is estopped from saying that property of defendant No.1 is not in place. The sale deed of plaintiff is unlawful in nature. The name of defendant No.1 has been mutated to the revenue documents of said property. The sale deed in favour of plaintiff is cryptic in nature and false boundaries have been mentioned therein. The plaintiff has initiated this dispute by colluding with defendant No.1 to restrain it from the proceedings initiated by it under Section 13 of SARFAESI Act since the proceedings are already initiated, the plaintiff cannot seek any relief in the Civil Court under Section 17 of SARFAESI Act. The jurisdiction to grant injunction lies only with Hon'ble Debt Recovery Tribunal. Therefore, the suit of plaintiff is barred under Section 34 of SARFAESI Act and thus not maintainable. Accordingly, it prayed for rejection of this application.

6. Considering the rival pleadings of the parties, the following points arise for my determination and I record my findings thereon with the reasons as follows,

Sr. No.	POINTS	FINDINGS.
1.	Whether the plaintiff has prima-facie case?	Yes
2.	Whether the balance of convenience lies in favour of the plaintiff?	Yes, In Part
3.	Whether the plaintiff will suffer irreparable loss, if the temporary injunction is rejected?	Yes, In Part
4.	Whether Plaintiff is entitled for Temporary	Yes

	Injunction?	
5.	What order ?	As per final order.

7. In support of her submissions, plaintiff has relied on following documents.

- 1) Sale deed in favour of plaintiff dated 30.10.2015 at Exh.3/1.
- 2) Photocopy of sale deed in favour of defendant No.2 dated 04.04.2014 at Exh.3/2.
- 3) City Survey extract/property card of City Survey No.13 at Exh.3/3.

8. Defendant No.1 and defendant No.2 have not filed any documents in support of their contentions.

9. Perused the record. Heard Shri. K. B. Sargar, the learned Counsel for Plaintiff and Shri. A.A. Shelar, the learned Counsel for defendant No.1 and learned Counsel for defendant No.2 A.U. Shete at sufficient length.

- REASONS -

AS TO POINT NO.1:-

10. It is the settled position of law that at the time of deciding temporary injunction of documents available on record can be taken into consideration without looking at their admissibility and formal proof. It is the basic case of plaintiff that the properties of herself and defendant No.1 are independent and separate. In her pleadings, the plaintiffs has mentioned the boundaries of properties possessed by herself as well as defendant No.1. According to plaintiff, she is the owner of property admeasuring 516.82 Sq. Mtrs. in City Survey No.13. Looking at the

pleadings of plaintiff it occurs that there is slight change in the boundaries of property possessed by herself and defendant No.1. Upon apparent perusal of boundaries of both properties in juxtaposition, it occurs that the boundary mentioned at northern side is different of both the properties. At the northern side of property possessed by plaintiff, the property in City Survey No.12 has been mentioned and at the northern side of property possessed by defendant No.1 there occurs remaining property in the same City Survey number i.e. City Survey No.13 and Kalki Temple. In support of his submission, plaintiff has filed on record the sale deed in her favour dated 30.10.2015. Upon apparent perusal thereof it appears that the vendor of property possessed by plaintiff is Smt. Vijayadevi Satishchandra Nisal, she has sold the property through her power of attorney holder Mr. Amit Gopalrao Patwardhan. At the same time Mr. Amit Gopalrao Patwardhan himself, Smitadevi Gopalrao Patwardhan and Manasi Rajiv Kher have consented the said transaction. The area and boundaries mentioned in sale deed are in consonance with pleadings of plaintiff.

11. The defendant No.1 has contended that Mr. Amit Gopalrao Patwardhan, Smitadevi Gopalrao Patwardhan and Manasi Rajiv Kher have sold the same property to plaintiff which was earlier sold both to defendant No.1 that means according to defendant No.1, the properties of plaintiff and defendant No.1 are one and the same. Therefore, plaintiff is trying to trespass the property of defendant No.1 in order to grab the same.

12. At Exh.3/2 there occurs the photocopy of sale deed in favour of defendant No.1. Upon apparent perusal thereof it appears that, the property was sold to defendant No.1 by Mr. Amit Gopalrao Patwardhan himself and as power of attorney holder for Smitadevi Patwardhan and Manasi Rajiv Kher. The description and boundaries of property mentioned

therein are in consonance with the pleadings of plaintiff. Although it has been claimed by defendant No.1 that, both properties are one and same and the same property has been sold by his predecessors to plaintiff. However, in such case, prima-facie the question arises that whether there was any dispute regarding position of said property between plaintiff and defendant No.1. However, defendant No.1 has not filed any documents in support of his contentions. In such case, it can be assumed that there was no prior dispute between the plaintiff and defendant No.1 regarding possession of property possessed by defendant No.1. As mentioned earlier, the description of boundaries and areas of properties possessed by plaintiff and defendant No.1 respectively appears to be different and separate. So also, the names of vendors thereof are also different. Apparently, it appears that, plaintiff has purchased the property from one Vijayadevi Satishchandra Nisal who appointed Mr. Amit Patwardhan as her power of attorney.

13. In such case, it can be said that she also had the transferable interest in the property which was purchased by plaintiff. At Exh.3/3 there is property card of City Survey No.13. Upon apparent perusal thereof it appears that it is a big property having total area of 41315.80 Sq.Mtrs. from the said property card it occurs that there are multiple transactions of smaller portions in the same property. The name of defendant No.1 has also been mentioned thereon as owner to the area of 464.68 Sq.Mtrs. The name of plaintiff has also been looking to be mentioned thereon for the area of 516.82 Sq.Mtrs. Names and areas mentioned thereon are also looking to be in consonance with the pleadings of plaintiff.

14. From the above discussion, it appears that the description and areas of properties of plaintiff and defendant No.1 are different. The

names of vendors mentioned on both sale deeds are also different to some extent. There also occurs slight change in the boundaries of both the properties. Although property card is not the document showing ownership of property, but it is a revenue document made for the purpose of convenience in securing public revenue. The revenue documents have their own presumption under section 157 of Maharashtra Land Revenue Code.

15. Accordingly, prima-facie it appears that the properties of plaintiff and defendant No.1 may not be one and same. Although defendant No.1 has contended that the vendors or predecessors of himself have subsequently sold the same property to plaintiff by making slight change in the boundaries, however, he has not filed any documents on record which will tend to show the situation mentioned by him. The defendant No.2 has contended that the sale deed of defendant No.1 is prior in nature and thus sale deed of plaintiff is subsequent, hence illegal. However, this is a matter of merit requiring detailed evidence which can be better commented after full fledged trial. For the purpose of temporary injunction, the Plaintiff need not to have complete case in his favour. Rather, apparent inference as to submitted facts, by the pleadings and documents on record is sufficient to hold the existence of prima facie case. Accordingly, I answer point no.1 in affirmative.

AS TO POINT NO.2:-

16. After discussing the existence of properties of Plaintiff and Defendant no.1, it will be proper to discuss regarding the proceedings initiated by Defendant no.2 for attachment of property of Plaintiff. The Defendant is looking to have challenged the maintainability of the suit in view of Sec.34 of SARFESI Act. Therefore, for its purpose it will be proper

to discuss the applicability of above mentioned proceedings in connection with the pleadings of the case at this stage. It is the admitted position that defendant No.1 mortgaged his property to defendant No.2 and he has failed to redeem such mortgage, and defendant No.2 has initiated attachment and recovery proceedings. The defendant No.2 has further contended that it has initiated the proceedings under Section 13 of SARFAESI Act. It does not occur to have denied about initiation of recovery proceedings regarding the suit property.

17. In such case, the person aggrieved as to take recourse to Hon'ble Debt Recovery Tribunal and not in the Civil Court. In such case, as defendant No.2 has questioned on the jurisdiction of this Court and also objected the maintainability of present suit, it will be necessary to peruse relevant provisions of SARFAESI Act. Under section 17 of SARFAESI Act. Under section 17 of SARFAESI Act, the person aggrieved by any measures taken by the secured creditors under sub section 4 of section 13 has to make application to Hon'ble Debt Recovery Tribunal. Under sub section 4 of section 13, the proceedings can be initiated by the secured creditors to recover the secured debt in case borrowers failed to discharge his liability. Under section 2(zd) secured creditors means any bank or financial institution holding any right, title or interest upon any tangible asset or intangible asset. Under Section 2(f), Borrower means any person who has been granted financial assistance by any bank or financial institute. The measures which have to be taken by secured creditor under sub section 4 of section 13 are regarding taking of possession of secured assets of borrower as well as taking over the management of business of borrower. In such case, prima-facie it appears that the bank or financial institution has to take measures against the borrower primarily.

18. Therefore, there is scope to believe that the property of borrower which is termed as asset in the said Act will be subject to the action taken by secured creditors i.e. bank or financial institution. However, in the present case, there occurs basic difference as to the identification of property and existence of alleged separate property of plaintiff. Looking at the aforesaid discussion, it prima-facie occurs that since the description and area of both properties is different. The vendors thereof and the boundaries have also a slight change from the City Survey extract or property card at Exh. 3/3 it occurs that City Survey No.13 is a big plot having area of about 41315 Sq.Mtrs. In such case, prima-facie it can be said that properties of plaintiff and defendant No.1 may be different. Although the sale deed of plaintiff is prior to that of defendant No.1, if the properties are one and same, then the plaintiff ought to have obstructed the possession of defendant No.1 over said property. However, defendant No.1 has not filed any documents in that regard. In such case, it basically appears that both properties may not be one and same. Defendant No.2 has also contended that the sale deed in favour of plaintiff is illegal and it contains false and cryptic boundaries. However, in absence of any evidence on record, this stage will be too early to comment anything about it.

19. Upon apparent perusal, Sec.34 looks to bar the order of injunction by civil court in respect of any action taken by the authority empowered by SARFAESI Act. However prima facie, financial institution (i.e. Defendant no.2) has to take measures against the borrower (i.e. Defendant no.1 in this case) primarily. Since it occurs primarily that, properties of Plaintiff and Defendant no.1 may not be one and same. Defendant no.2 does not occur to have denied about initiation of recovery proceedings regarding the suit property. Therefore, it will not be proper

to permit the Defendant no.2 to continue with the proceedings under SARFAESI Act, which may have no connection with the 'secured assets' under SARFAESI Act. In such case, in my opinion the balance of convenience lies in favour of Plaintiff in part. Accordingly, I answer point no.2 as Affirmative in part.

AS TO POINT NO.3:-

20. It is the admitted position that defendant No.1 mortgaged his property to defendant No.2 and upon failure to redeem such mortgage, defendant No.2 initiated attachment and recovery proceedings. However, at the same time properties of Plaintiff and Defendant no.1 are not looking to be one and same. In such case, if Defendant no.2 continues with the recovery proceedings in regards with suit property, it may have to be said that it may cause irreparable loss to Plaintiff, who is looking to be possessor of the property which may be different from that of the Defendant no.1. Accordingly, in my opinion the irreparable loss lies in favour of Plaintiff in part. Hence, I answer point no.3 as Affirmative in part.

AS TO POINT NO. 4 AND 5:-

21. This issue is concerned with the entitlement of Plaintiffs as to the relief prayed. From the above-mentioned discussion, it has become clear that there appears *prima facie* case in favour of Plaintiff. Accordingly, points as to Balance of convenience as well as irreparable loss are also answered in affirmative in part. The remedy of temporary injunction is a discretionary remedy. The discretion of Court is always based on sound principle of justice equity and good conscience. Hence at this stage, I consider that the Plaintiff is looking to be entitled to the relief of Temporary Injunction as prayed. Defendant no.2 has alleged that the

Plaintiff has colluded with the Defendant no.1 in order to prohibit it from continuing with the recovery proceedings initiated by it. However, this cannot be the proper stage to comment as to the intentions of Plaintiff behind the present litigation.

22. At the same time, as many of the facts taken recourse by both the parties such as to the documents etc. for the Plaintiff etc. requires detailed hearing, therefore it would be proper to order parties to bear their own costs. Cumulatively, I tend to pass following order in answer to point 4 and 5.

ORDER

1. Application is allowed.
2. Defendant no.2 or its servants or persons claiming under it are hereby restrained from initiating or conducting any procedure as to attachment of suit property.
3. Parties to bear their own Costs.

Sangli
Date:-05.12.2024

(O. S. Shastri)
11th Joint Civil Judge Junior Division,
Sangli.

CERTIFICATE

I affirm that the contents of this P.D.F file judgment/order are same, word to word, as per the original judgment/order.

Name of Stenographer :- Rafik B. Samalewale, Stenographer

Name of Court :- **Shri. Onkar S. Shastri**
11th Joint Civil Judge (J.D.), Sangli.

Date of decision/typed :- 05.12.2024

Judgment/order signed by the :- 05.12.2024
PO. on

Judgment/order uploaded on :- 05.12.2024