

COMMON ORDER BELOW EXH. 176 & 177 IN
SPECIAL CIVIL SUIT NO. 68 / 2012.

(Shri. Suryakant Annaso Sutar v/s Shri. Sharad Vasantrao Jadhav)

1. The defendants no. 5, 6, 7 and 8 have filed this temporary injunction application against the plaintiff that he should not carry out any construction or development activity in the suit property or he should not create third party interest in the suit property until the decision of the suit.

2. The defendants case is short is as under :

The defendants state that the plaintiff has filed the present suit against them for the cancellation the sale deed, permanent injunction and for recovery of possession of the suit property.

3. The defendants state that the plaintiff had executed a sale deed of the suit property bearing C.S.T.No.49/1 situated at Miraj in their favour. They state that they had paid handsome consideration to the plaintiff. The defendants state that the ownership, title and possession of the suit property is with them. The defendants state that the plaintiff has alleged fraud and cheating against the defendants no.1 and 2 only. They state that there are no allegations of fraud and cheating against them. The defendants state that the plaintiff had sold 0 H, 80 R land from C.S.T.No.49/1 except 4 R land at north-west corner and 8 R land at north-east corner. The defendants state that the 8 R land at the north-east corner is the suit property. They state that the entire C.S.T.No.49/1 is agricultural land. The defendants state that the plaintiff has sold this land to them on 05.09.2011 by registered sale deed bearing no.3929/2011.

The defendants state that now the plaintiff had started construction in the western side of the suit property specifically sold to them. They state that the plaintiff had himself stated that this land cannot be put for non agricultural use.

4. The defendants state that the plaintiff had the intention to sale the suit land. He has no allegations against them. They state that the plaintiff himself filed a temporary injunction application against them, that they should not create third party interest in the suit property. Thus they state that the plaintiff had admitted their lawful ownership, title and possession. The defendants state that their names have been entered into the 7/12 extract of C.S.T.No.49/1 at Miraj. They state that the revenue authority had entered their names after verifying their actual possession in the suit property.

5. The defendants state that they had agreed before the Court and given an undertaking that they would not create any third party interest in the suit land. They state that inspite of having invested huge amount of purchasing the suit land, they have not carried out any development work in the suit property. The defendants state that the plaintiff wants to harass them and so he had started illegal construction in the suit property. They state that the plaintiff himself being an advocate is trying to take undue advantage of his profession and he is trying to over-awe them by his illegal acts. They state that the plaintiff is also trying to influence the police authority. The defendants state that they had requested the plaintiff on 07.09.2017 and 10.09.2017 to not to do any construction when the matter is pending in the Court. They state

that the plaintiff threatened them that he would complete the construction. The defendants state that they do not have any alternative except to approach this Court with the temporary injunction application. The defendants have reiterated that they are the bonafide purchasers of the suit property from the plaintiff. They are the true owners of the suit land. They are in the lawful possession of the suit property on the basis of registered sale deed dated 05.09.2011. The defendants state that the plaintiff is trying to prolong the hearing of the suit for couple of years on one or the other reasons. The defendants state that the plaintiff wants to interfere and disturb their peaceful possession during the pendency of the suit.

6. The defendants state that if the plaintiff is not restrained from such illegal construction in the suit property then he will change the nature of the suit property, he will induct some unlawful elements in the constructed part and thereby cause loss to their ownership, title and possession. The defendants state that if this happens, then they will put to irreparable loss, which cannot be compensated in terms of money. The defendants state that they have prima-facie case, they have lawful ownership, title to the suit property, they are in lawful possession on the basis of sale deed. The defendants state that the legal principles of equity, balance of convenience lies in their favour. Therefore the defendant have requested to grant temporary injunction against the plaintiff that he should not carry out any construction, development work in the suit property until the decision of the suit. They have also requested that the plaintiff should be directed not to create third party interest in the suit property until the decision of the suit. Lastly they have

requested to allow their injunction application.

7. The plaintiff has strongly opposed this application by filing his say at exh.178. The plaintiff states that he has started the construction in the suit property with good faith and honest intention. The plaintiff states that he has started his construction in the 6 R land towards west-north side in the C.S.T.No.49/1 as agreed with the defendants. The plaintiff states that the defendants have executed a forged sale deed in their favour. The plaintiff states that the defendants cannot claim any right on the basis of forged sale deed. The plaintiff states that he is constructing a farm house of 585 sq. ft. in his land as per his legal rights. The plaintiff states that the 6 R land from the suit property is in his possession even today. The plaintiff states that he has not delayed the suit. He states that the defendant no.1 filed counter claim and so there was delay. He states that the defendants are themselves responsible for delay in this suit.

8. The plaintiff states that he had received amount of Rs.12,00,000/- from the defendant no.1 before the sale deed. He states that thereafter he received an amount of Rs.10,00,000/- out of Rs.15,00,000/- from the defendant no.1. The plaintiff states that later he had received a cheque amount of Rs.5,00,000/- from Mr. Sharad Jadhav and defendant no.1 but when he came to know this was forged sale deed he deposited the cheque in the Court.

9. The plaintiff states that he is in possession of the suit property. Even today he had cultivated sugarcane crop in this land. He has submitted the bills of the sugarcane crop alongwith his say. The

plaintiff states that he has alleged fraud and cheating against all the defendants. The plaintiff states that the defendant no.1 has cheated through defendant no. 5 to 8. The plaintiff states that the defendants no. 5 to 8 have never paid Rs.12,00,000/- or Rs.15,00,000/- to him. He states that the defendants are claiming ownership or title without paying a single rupee to him.

10. The plaintiff states that the defendants have themselves agreed that 4 R land in the suit property towards north-west side and 8 R land towards north-east corner would remain with the plaintiff. But even though they are filing the temporary injunction application to stop his construction. The plaintiff states that he has not done any illegal construction in the suit property. The plaintiff states that he has taken care that nobody should encroach upon C.S.T.No.49/1, nobody should create any right to suit property. The plaintiff states that the defendants are not the owners, they are not in the possession of 80 R of the property.

11. The plaintiff states that one Mohamad Dhalayit had encroached and done illegally consideration in the suit property. So also one Suresh Sutar had tried encroach and do illegal construction in the suit property. The plaintiff states that he opposed both of them and did not allow them to carry out any construction. The plaintiff states that he had already filed civil suit against the encroachers in the Miraj Court. The plaintiff states that he is residing in the suit property alongwith his family. The plaintiff states that he has his cattle in the suit property. He states that he cultivates sugarcane and other crops. So the plaintiff states that this application should be rejected.

12. The following points arise for my consideration, I have decided them along with reasons as under.

| Sr. No. | Points | Findings |
|----------------|---|--------------------------|
| 1 | Whether defendants have made out a prima facie case against the plaintiff ? | In the affirmative. |
| 2 | Whether balance of convenience lies in favour of the defendants ? | In the affirmative. |
| 3 | To whom irreparable loss would be caused if this temporary injunction application is rejected ? | To defendants no.5 to 8. |
| 4 | What order. | As per final Order. |

REASONS

As to Point No.1 to 3 :

13. As all the points are interlinked with each other, I have discussed them together. The suit is for the cancellation of the sale deed bearing number 3929/2011 dated 05.09.2011 registered at Sub Registrar Office, Miraj No.2, Miraj. The defendants no.5 to 8 state that they had purchased 80 R land from C.T.S.No.49/1 at Miraj from the plaintiff for valid consideration. The defendants state that they have paid huge consideration amount to the plaintiff while purchasing the suit property. The defendants state that they have become the owners of the suit property after the sale deed. They have got the possession of the suit property and their names have been entered into the 7/12 extract of the suit property. This being the position they state that, the plaintiff is trying to disturb their possession. They state that the plaintiff is trying to change the nature of the suit property, he is trying to develop the suit

property, he is trying to create third party interest in the suit property. So they have filed this application to restrain the plaintiff from carrying out any construction in the suit property.

14. The defendants no.5 to 8 have filed photographs of the construction carried out by the plaintiff in the suit property. The defendants state that it can be seen from the photographs that the plaintiff has almost completed the construction of a house in the suit property. They state that if the plaintiff brings somebody in the house property then it would affect their rights. On the other hand the plaintiff states that he is constructing a farm house in his own agricultural land. He states that he is carrying out the construction in good faith. The plaintiff also states that he is carrying out the construction in his own property. The plaintiff states that it was agreed between the parties that 4 R land from the north-west corner and 8 R land from the north-east corner would remain with him. So he is completing the construction in his own land. But he states that now the defendants changed their mind and they are disturbing or obstructing his construction. The plaintiff states that the defendants are never in the possession of the suit property. He states that the defendants have not paid any consideration amount to him.

15. After hearing both the sides, after going through the document filed alongwith the suit and the written statement I feel that both the plaintiff and defendants had given undertaking at exh.5 that they would maintain status-quo in respect of the suit property. The defendants have maintained the status-quo in respect of the suit property. But the

plaintiff has started construction in the suit property. The question whether the defendant no.1 has cheated with the help of defendants no. 5 to 8 will be decided only after the evidence of both the sides. At this stage the plaintiff has contended in the suit that he had received part payment in respect of consideration amount of the sale deed from defendant no.1. Now he cannot state that he has not received anything from any of the defendants. I am of the view the plaintiff should have waited till the decision of the suit. He should have maintained the status-quo in respect of the suit property. The plaintiff and the defendants had given undertaking to the Court on 21.08.2014 that they would maintain status-quo, they would not change the nature of the suit property, they will not dispose of or alienate the suit property until the decision of the suit. But now the plaintiff himself is carrying out the construction in the suit property.

16. The advocate of the plaintiff has relied upon the following case laws to support his argument. The advocate for plaintiff has strongly argued that the defendants cannot file such type of application under Order 39, Rule 1 of the C.P.C. He states that only the plaintiff has right to file such type of the applications to prevent the property from being wasted damaged or alienated by any party to the suit or wrongfully sold in execution of a decree. He states that Order 39, Rule 1(a, b, c) uses the word defendants only. He states that only the plaintiff can file such type of applications. So he states that this application is not maintainable and it should be rejected. The advocate for the plaintiff has relied upon the judgment of the Hon'ble High Court of Karnataka in 2015 AIR (Kar) 13, Smt. Shakuntalaamma w/o Chinnappa v/s Smt. Kantamma w/o late

Bhammanna, decided on 05.09.2014. The Hon'ble High Court has ruled that the relief under Order 39, Rule 1 (b and c) is concerned, such relief is available only to the plaintiff and defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit. It also laid down that it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39, Rule 1 (b and c) of the Code. The very important thing laid down in this judgment is that in cases which do not fall under Order 39, Rule 1 of the Code, the Court has inherent jurisdiction to grant the relief of injunction in its discretion, if it is satisfied that such an order is necessary to meet the ends of justice or to prevent abuse of process of court and nothing in the Code shall limit or otherwise affect such inherent power of court.

17. The advocate of plaintiff has also relied upon the judgment of Hon'ble Bombay High Court in 1991(1) Mh.L.J. 689. Nanasahab Sakharam Bhalekar v/s Dattu Dhondaba Bhalekar. The Hon'ble High Court had laid down the same principles that injunction under Order 39, Rule 1, clause a can be granted in favour of either of the parties i.e. plaintiff or defendant, whereas in respect of situation covered by clauses (b and c), injunction can be granted only in favour of the plaintiff and not defendant.

18. On the basis of the above judgments I am of the view that the applications of the defendants no. 5 to 8 is under Order 39, Rule 1 (a) of the C.P.C. Which means that either the plaintiff or the defendants can

file this application for temporary injunction. I am of the view that the plaintiff is carrying out the construction in the suit property, he is developing the suit property. So the defendants can file such type of temporary injunction application against the plaintiff. I am of the view that the defendants have made out a prima-facie case against the plaintiff. The defendants have shown that they have already paid the consideration amount to the plaintiff. They have shown that they are in possession of the suit property on the basis of their entries into the 7/12 extract of the suit property. The defendants have filed photographs to show that the plaintiff has almost completed the construction in the suit property. The balance of convenience is in favour of the defendants. If the plaintiff complete the construction then irreparable loss would be caused to the defendants. So I think that the plaintiff should be temporarily restrained from carrying out the construction, developing the property or making any changes in it until the decision of the suit. So I answer points no.1 to 3 in favour of the defendants. I allow the application by passing the following order.

ORDER

1. The applications at exh.176 & 177 are allowed.
2. The plaintiff is hereby restrained from carrying out the construction or developing the property until the decision of the suit.
3. The suit to proceed accordingly.

Sangli.

Date : 07.11.2017.

Sd/-

(P. G. Bhosale)

Civil Judge Sr. Dn., Sangli.