

(Order Below Exh 5 in Regular Civil Suit No. 17/2015)
(Popat Namdeo Waghmare V/s Appaso Mayappa Sawant and
other)

1. The plaintiff has filed suit for specific performance and permanent injunction and by this application prayed that, defendant no. 1 to 4 be temporarily restrained from alienating suit property and defendant no. 5 be temporarily restrained from obstructing possession of the plaintiff over suit property till final decision of the suit.

2. It is the case of the plaintiff that, 1.32 R land towards east out of block no. 25 situated at Village Salekiri (Pacchapur), is the subject matter of the suit property. **(Here-in-after referred as "Suit Property ".)** Suit property is owned by defendant no. 1 to 4. In the year 1998 for the domestic need, they intended to sell suit property and requested the plaintiff to purchase suit property. Hence, the plaintiff agreed to purchase suit property. The terms of sells were fixed in presence of panchas namely Nana Gadade and Khandu Patil. The price of suit property was fixed Rs. 45,500/- and out of that, Rs. 14,000/- given as an earnest money and possession of suit property was handed over to the plaintiff at the time of execution of agreement-to-sell. It was agreed that, suit property is Class-II occupancy land hence the defendants have to seek necessary permission and within one month of permission, the

sale-deed is to be executed by paying remaining amount. Accordingly, an agreement-to-sell was executed by defendant no. 1 to 4 in favour of the plaintiff and the possession was handed over to him.

3. It is further contended that, since agreement-to-sell the plaintiff is in possession of the suit property and time to time, the plaintiff was asking to the defendants Whether they have obtained the permission for sale. However, the defendants were telling that, as the plaintiff is in possession of the suit property, the sale deed can be executed at any time. Then prior to one month, the plaintiff heard that, defendant no. 1 to 4 intended to sell suit property to defendant no.5 and they had moved application for permission to sell the suit property to defendant no.5. On 1.6.2013, the plaintiff requested defendant no. 1 to 4 to execute sale deed but the defendants denied for the same.

4. It is contended that, the plaintiff was always ready and willing to perform his part of contract however, the defendants are not performing their part of contract and they denied to execute sale-deed of suit property in favour of the plaintiff hence on 14.8.2013, he issued notice to the defendants and demanded to execute sale-deed of the suit property however, the defendants gave false reply.

5. It is further contended that, defendant no. 1 to 4 are going to sell suit property to defendant no.5 and defendant no.5 is talking to take forceful possession of suit property. It is further contended that, the plaintiff has prima-facie case. The balance of convenience is lies in his favour. If temporary injunction as prayed not granted, he will suffer irreparable loss. Hence, prayed for granting temporary injunction.

6. Defendant no. 1 to 4 appeared and filed their Say below Exh 26. They denied contents of suit and application in toto. It is contended by defendants that, defendant no.2 was in need of money for marriage of his daughter. The plaintiff was giving hand loan to the needy person and the plaintiff and defendant no.2 was knowing each other hence, defendant no.2 demanded Rs. 14,000/- to the plaintiff. The plaintiff agreed to pay the money but told to execute stamp as security to amount. Defendant no. 2 was illiterate person hence the plaintiff asked defendants that, defendant no. 1 and 4 should be witness for the transaction. It was agreed that, defendant no.2 has to repay Rs. 20,000/- within one year including interest. Accordingly, they decided to execute hand loan receipt however, taking disadvantage of illiteracy of the defendants, the plaintiff got executed the agreement-to-sell in lieu of the hand loan receipt.

7. It is contended that, suit property is class II occupancy hence the agreement-to-sell is basically illegal and possession was never handed over to the plaintiff. An amount of Rs. 20,000/- was returned to the plaintiff in presence of the witnesses namely Ravaso Patil and Nana Gadade. At that time, the defendants made demand of stamp paper however, the plaintiff told that, stamp paper is missing and he will return when found it and thereby retained stamp paper with him.

8. In the year 2013, there was need of money to the defendants for operation of defendant no. 2 and 4 hence the defendants intended to sell suit property and gave notice to that effect in daily newspaper Kesari on 8.5.2013 and decided to sell suit property to defendant no.5. At that time, the plaintiff has not taken any objection for transaction between defendant No.1 to 4 and 5 and hence defendant no. 1 to 4 obtained necessary permission for sale of suit property. However, under bad advise of notorious persons, the plaintiff has filed this false suit and application for temporary injunction. No any amount is due to pay the plaintiff. No any transaction was taken place between them. If it is held that, there was any agreement-to-sell in the year 1998, then why the plaintiff keep mum till 2013. So also, consent of sisters of defendant no. 1 to 4 was not taken for that transaction. This fact shows that, transaction between the plaintiff and

defendant no. 1 to 4 was hand loan transaction. The plaintiff has not come in the Court with clean hands and he has no prima-facie. The balance of convenience does not lie in favour of the plaintiff. The possession was not handed over to the plaintiff hence no irreparable loss would be caused to him. Accordingly, defendant No. 1 to 4 prayed for rejection of temporary injunction application.

9. Defendant no. 5 resisted the suit and application by filing a reply below Exh 24. He denied contents of suit and temporary injunction application in toto. It is contended that, co-sharer namely Babaso, Ashok, Suresh, Jayshree, Kallavva Yelappa Sawant intended to sell him property owned by them and accordingly agreement-to-sell is executed on 26.3.2012. Then the defendants also intended to sell suit property and they requested him to purchase suit as he is purchasing half portion of block no. 25. Accordingly, agreement-to-sell is executed. The fact of agreement-to-sell is known to the villagers. Then the application was made by the defendants and Babaso and obtained permission to sell suit property. At that time, the plaintiff has not taken objection. Then defendant no. 1 to 4 issued public notice in daily newspaper Kesari on 8.5.2013. At that time also, the plaintiff has not taken objection. Then on 20.6.2013, the plaintiff made complaint to Deputy Commissioner, Pune, for not sanctioning permission to sell suit property. Accordingly, inquiry was held however, Circle

Officer, Muchandi reported that, agreement-to-sell is not registered hence given sanction to sell of suit property. It is further contended that, remaining half portion of block no. 25 has been purchased by him. Now, the cost of the land is increased hence in order to get suit property at low price, the plaintiff has filed this false suit. The plaintiff has not shown his willingness to purchase suit property. This fact shows that, transaction between the plaintiff and defendant no. 1 to 4 appears to be security to the amount. So also, suit is not within limitation. The plaintiff is not diligent as to his right hence, suit as well as temporary injunction application may kindly be rejected.

10. On the basis of pleadings of the parties, following points arise for determination and my findings thereupon for the reasons to follow are as under :-

POINTS

FINDINGS

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|--|---|
| 1. Whether the plaintiff made out prima-facie case ? | Partly yes, to the extent of injunction as to alienation. |
| 2. Whether balance of convenience lies in his favour ? | Partly yes, to the extent of injunction as to alienation. |
| 3. Whether the plaintiff will suffer irreparable loss if injunction is not granted ? | Partly yes, to the extent of |

injunction as to
alienation.

4. What Order ?

As per final order.

REASONS

11. Learned Counsel for the plaintiff submitted that, suit property is ancestral land and it is Class-II occupancy. The defendant no. 1 to 4 intended to sell suit property to meet their family expenses hence on 12.5.1998, defendant no.1 himself purchased stamp paper and defendant no. 1 to 4 executed agreement-to-sell in favour of the plaintiff and he is in possession of suit property since 1998. The document i.e. agreement-to-sell reflects that, possession is handed over to the plaintiff. Hence, at this prima-facie stage, affidavits of attesting witnesses cannot be taken in to consideration. At present, suit property is in possession of the plaintiff. The plaintiff is having prima-facie case. Balance of convenience is lies in favour of the plaintiff. If injunction as prayed not granted, the plaintiff would suffer irreparable loss. Hence, he prayed for granting temporary injunction application.

12. Learned Counsel for the plaintiff submitted that, the plaintiff has proved his possession, hence even though he has no title, he is entitled to temporary injunction as prayed. The Learned Counsel for the plaintiff relied on following rulings :-

- (1) Smt. Sarladevi widow of Kundanlal Bandawar,
Dharampeth, Nagpur V/s Shailesh s/o
Gourishankar Namdeo, Tilaknagar, Nagpur AIR
1996 BOMBAY 98
- (2) Nirav Deepak Modi V/s Najoo Behram
Bhiwandiwalla & Others 2012 (2) ALL MR 809
- (3) Sanjay Shrikihanji Somani & another V/s
Vishnupant Shankarrao Shahane 2007 (6) AIR
Bom 72
- (4) Subhash Dhanraj Sankla V/s Kajkhushroo alias
Kaki Phiroze Noble 2014 (1) ALL MR 311.

13. Learned Counsel for the defendants submitted that, suit property being Class II occupancy, agreement-to-sell can be executed but possession cannot be handed over without permission of appropriate authority. The alleged agreement-to-sell was executed in the year 1998 but till year 2015, the plaintiff has kept mum. The possession of suit property is not handed over to the plaintiff. 7/12 extract clearly shows that, the defendants are cultivating suit property. Had been the possession was handed over to the plaintiff, he would have taken steps to enter his name to crop statement but he did not do so. The plaintiff has no prima-facie case. So also, the balance of convenience not lies in favour of the plaintiff. If the application is allowed, defendant no. 1 to 4 would suffer irreparable loss. Hence, he submitted for rejection of

temporary injunction application.

14. Learned Counsel for the defendants relied on following rulings :-

- (1) Bharat Petroleum Corporation Limited V/s Videocon Properties Limited 2014 (5) ALL MR 331.
- (2) Purnimakumari Dharmendra Jain & Another V/s M/s. J. Gala Builders & Others.

15. On perusal of material on record, it appears that, in the year 1998, the plaintiff has paid Rs. 14,000/- to defendant no. 1 to 4. According to the plaintiff, defendant No. 1 to 4 entered into agreement-to-sell in respect of suit property and he paid an amount of Rs. 14,000/- as earnest money and he has been put in possession of suit property on the date of execution of agreement-to-sell.

16. On the other hand, it is the case of the defendants that, defendant no. 2 has taken Rs. 14,000/- as hand loan and for the security of that amount, he executed document however, by taking disadvantage of illiteracy of the defendants, the plaintiff got executed the document of agreement-to-sell. Therefore, the question whether the document in question is agreement-to-sell or hand loan transaction between the parties, is the question, which

would be resolved at the final stage after recording the evidence of the parties. At this stage, the possession over suit property is relevant factor. According to the plaintiff, he was put in possession of the suit property on 12.5.1998. Both the parties are claiming their possession over suit property. As per Section 163 of The Maharashtra Land Revenue Code, 1966, entries in revenue record are having presumptive value. At this prima facie stage, entries in revenue record are relevant. The entries in revenue record have presumptive value. According to the plaintiff, he is in possession of suit property since 1998. The plaintiff filed affidavits of neighbouring land holders namely Ravindra Salunkhe, Ganpat Salunkhe, Gurunath Kulkarni. It is the case of the plaintiff that, he is cultivating suit property since 1998, however the name of defendant no. 1 to 4 is appearing in cultivation column of suit property. If the plaintiff is cultivating suit property then why he has not entered his name to the cultivation column of suit property. Furthermore, the witnesses namely Nana Gadade and Khandu Patil, who were present at the time of transaction between the plaintiff and defendant no. 1 to 4, made statement on oath before Tahsildar, Jath that, transaction between the plaintiff and defendant no. 1 to 4 was hand loan and the defendants repaid Rs. 20,000/- in their presence to the plaintiff.

17. In support of his claim, the plaintiff has filed the

agreement-to-sell and affidavits of neighbours. However, the name of the plaintiff is not appearing to the cultivation column of suit property. Hence, considering the entries in revenue record and affidavit of witnesses filed by the defendants, I hold that, the plaintiff has failed to prove his possession over suit property.

18. According to the defendants, they had taken hand loan of Rs. 14,000/- and as security to amount, they had executed document in favour of the plaintiff. As earlier discussed, whether document in question is agreement-to-sell or hand loan, is question, which could be decided after recording evidence of the parties. Defendant no. 1 to 4 obtained permission of revenue authorities. Defendant no. 1 to 4 are intended to sell suit property to defendant no.5. In order to avoid the multiplicity of proceeding, it will justifiable to maintain the status quo in respect of alienation of property till final decision of the suit. Therefore, it is justifiable to restrain defendant no. 1 to 4 from alienating suit property till decision of the suit. The plaintiff has prima facie failed to prove his possession over suit property. There is no balance of convenience in favour of the plaintiff. However, as earlier discussed, it is necessary to maintain status quo in respect of alienation of suit property. Accordingly, I answer point no. 1 to 3 and proceed to pass following order.

ORDER

1. Temporary Injunction application below Exh 5 is partly allowed.
2. Defendant no. 1 to 4 are restrained from alienating suit property till decision of the suit.
3. Rest of the plaintiff's prayers are rejected.
4. Cost in cause.

Date : 4.4.2015

Sd/-
(S.H. Salunkhe)
Civil Judge Junior Division,
Jath.