

Order below Exh.5 in RCS 220/2020
Sanjay Chougule Vs Shrishail Hippargi
(CNR-MHSN08-002034-2020)

The interim injunction application is under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (the C.P.C).

2 Perused the application, and the record.

3 Heard.

4 Brief facts of the plaintiff's case:- The suit is for declaratory decree that the sale deed bearing No.3013/2019 Dt. 22/10/2019 in respect of the suit property 1B got executed by the defendant plaintiff from the earst while owner Tanaji Bapu Patil vide registered sale deed for valuable consideration on or about 07/11/2013. The same compromised 10x15 Ft tin shade. The plaintiff availed loan Ganesh Vyapari Gramin Bigar Sheti Sa.Pathsantha Marya. Jath. The mutation entry has been notified. The taxes have been paid by the plaintiff. The suit properties has been possessed by the plaintiff. On or about 18/01/2020, the plaintiff received a notice Dt.18/01/2020, and came to know about the allged sale deed and the payment of consideration via cheque. The plaintiff obtained the certified copy of the sale deed. The same has been challenged. The defendant has filed his detailed ws cum say below Exh.17 and combated the claim on various counts. It has been contended that the jurisdiction was out and out sale. The plaintiff has delivered the possession to the defendant and excepted the consideration. The suit is an after thought the defendant possesses the suit property. At the time of sale it was agreed condition that the plaintiff has to obtained no objection certificate of the above financial institution for the loan availed by the plaintiff. Despite received hand some consideration. The plaintiff fail to obtained the NOC from the concern financial institution. The grivence that to defendant does not possess the suit property is misconceived. The contentions to fraud etc., and the execution of the alleged noterized document, obtaining of the alleged signature of the plaintiff or the sale deed being the security document or the defendant being a money lender etc., have been stoutly denied and disputed. Hence, the application is opposed.

5 The plaintiff has filed the following documents viz.,

Sr.No	Particulars of the documents
1	Assessment registered
2	VF No.7 and 12
3	Photographs (total 3)
4	Photo bill
5	Tax receipts (total 2)
6	Electricity bill (total 2)
7	Report to the SP, Sangli
8	RPAD slips (total 4)
9	Acknowledgment cards (total 4)
10	Notice of financial institution
11	Letter of District Sub registrar
12	Notice
13	Notice reply
14	Postal acknowledgment
15	Sale deed (total 2)
16	ME 22559
17	Assessment list
18	Tax receipts

6 The defendants have not relied upon any documents.

7 The following points arose for my determination, to which I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Does the plaintiff proves prima-facie case in his favor?	Yes
2	Does the plaintiff proves balance of	Yes

	convenience tilts in his favor?	
3	Does the plaintiff proves he would suffer irreparable loss, if interim injunction is refused?	Yes
4	What order?	As per the final order.

Reasons

Points 1 to 3

8 It is sine qua non for the grant of an interim relief, which is an equitable relief that the plaintiff, should prima-facie, prove the above points for determination.

9 It is trite law that prima-facie, does not mean prima-facie, title or the case proved to the hilt.

10 It is settled law that grant of equitable relief is a matter of judicial discretion, and the plaintiff, should approach the Court with clean hands.

11 The pleadings and the material on the record have to be judicially scanned.

12 While, the plaintiffs case is that the sale deed is illegal and he possess the suit property, the jurisdiction was executed playing fraud etc., vis-a-vis money lending transaction. The defendant came with a theory of out and out sale. On prima-facie, perusal of the sale deed, it appears to be a sale transaction for valuable consideration. There is a specific mention of the fact that the plaintiff has delivered the possession to the defendant. However, on perusal of the ws below Exh.17 para 17 it has been contended by the defendant that on or about 31/01/2020, the plaintiff trace pass the suit property when the defendant was out station by braking open the lock. The defendant reported the matter to police station. The defendant does not possesses the suit property. The defendant is a trace passer. From the above limited facts it may be prima-facie, said that it is the plaintiff, possesses the suit property as of the institution of the suit. A questions whether the transaction was nominaly or valid one are the triable issues. This when

considered with the tax receipts may suggest that the plaintiff possesses the suit property. The original tax receipts are produced on the record. The contentions that the plaintiff has suppressed the loan or fail to obtain NOC may not be considered on merits at the appropriate stage. When the defendant contents to have been dispossessed vis-a-vis not filing for counter claim for possession may suggest that the plaintiff prima-facie possession has to be protected.

13 For the above reasons, the plaintiff proves prima-facie case in his favor. The balance of convenience tilts in favor of the plaintiff. Therefore, the plaintiff may suffer irreparable loss/harm/prejudice, if interim injunction is refused. The comparative mischief that would be caused to the plaintiff, would be more, if interim injunction is refused. Accordingly, the points for determination are answered. Costs follows the event. Hence, the following

Order

The application is allowed

2 The defendant his agents, servants, attorneys or anybody claiming through them, are hereby temporarily restrained from disturbing the plaintiff's possession over the suit property in any manner, whatsoever, till final disposal of the suit.

3 It is may clear that the interim order shall not operate as a bar to the recovery proceedings by the financial institution in respect of the suit property.

4 Costs in the cause.

Jath
Date:04/03/2025

(Sanjay P.Bunde)
Jt.C.J.J.D, Jath