

## **Order below Exh.5 in**

**R.C.S. No. 98/2021**

**CNR-MHSN-12-000941-2021**

(Hasim Pathan Vs. Rangrao Gavade)

The plaintiff has filed present application for seeking the relief of temporary injunction against defendant.

2. The plaintiff has instituted present suit for relief of perpetual injunction.

3. Before dealing with application, it would be appropriate to mention facts of the case in brief.

4. It is the case of the plaintiff that property situated in the block no. 230 at village- Ghogaon, Tal.Palus, Dist. Sangli having area of 1H 88R out of which 18.66R as described para 1B of the plaint is the suit property. (Hereinafter shall be referred as 'suit property'). On 08/03/2019, by way of registered sale deed, plaintiff has purchased suit property from Ismail Daudkhan Pathan. Since, then plaintiff is having peaceful possession over the suit property. Plaintiff has cultivated groundnut crop. Defendant is having no adjacent land to suit property. In fact, defendant is having no concern with suit property, then also, on, 01/08/2021 defendant made obstruction for cultivation of suit property. Therefore, cause of action accrued. Accordingly, plaintiff instituted simpliciter suit of injunction. Accordingly, plaintiff filed the present application for temporarily restraining the defendant. On all these grounds, plaintiff prayed to allow the application.

5. Defendant filed his say vide exh.15 and strongly opposed the application. It is contended by the defendant that, plaintiff is not

having actual physical possession over the suit property. In fact, the suit property is in possession of defendant. On, 17/01/2003, Ismail Daudkhan Pathan had executed registered mortgage deed bearing no. 158/2003. On the basis of that deed defendant acquired possession over the suit property for period of 7 years. Thereafter, on 25/06/2015, Ismail Daudkhan Pathan had again executed mortgage deed in respect of present suit property. On the basis of that deed, defendant retained possession over the suit property for further period of 5 years. Thereafter, on 05/07/2021, once again Ismail Daudkhan Pathan had executed registered mortgage deed bearing no. 1930/2021 in respect of present suit property. On the basis of that deed, Ismail Pathan has extended the possession of defendant for period of 3 years. In fact, defendant has paid total amount of Rs. 1,50,000/- in favour of Ismail Daudkhan Pathan. The sale deed executed by Ismail Pathan in favour of plaintiff is sham and bogus. Ismail Daudkhan Pathan alone was not having right to alienate the suit property. Therefore, sale deed is not binding on the defendant. In fact, defendant has cultivated groundnut crop over the suit property and having settled peaceful possession from the year 2003. Plaintiff suit is hit by principle of non-joinder of party as well as by the principle of estoppel by conduct, estoppel by admission. Plaintiff has not come before the court with clean hands. On all these grounds, defendant prayed for rejection of application.

6. After considering the contents of application following points arise for my determination along with my findings thereon.

| <b><u>Sr. No.</u></b> | <b><u>Points</u></b>  | <b><u>Findings</u></b>        |
|-----------------------|---|-------------------------------|
| 1.                    | Whether the plaintiff proves that he is having prima-facie case ? | <b><u>In the negative</u></b> |

|    |  |                                  |
|----|--|----------------------------------|
| 2. | Whether the plaintiff proves that balance of convenience lies in his favour ?                        | <i><u>In the negative</u></i>    |
| 3. | Whether the plaintiff proves that he will suffer irreparable loss if the injunction is not granted ? | <i><u>In the negative</u></i>    |
| 4. | What Order ?   | <i><u>As Per Final Order</u></i> |

7. Both parties have relied upon some documents which will be mentioned at appropriate place.

**AS TO POINT NO. 1 TO 3:-**

8. These points are interlinked with each other and for the sake of convenience they are discussed together.

9. In the light of this aforesaid points, it would be appropriate to mention the argument advanced by both sides

10. The learned advocate for the plaintiff has argued that on the basis of sale deed, plaintiff has become the owner of suit property. Plaintiff has paid consideration amount of Rs. 4,20,000/-. Sale deed (exh. 3/2) dated 06/03/2019 is registered document. Apart from this, he further argued that even for the sake of moment it is assumed that mortgage deed bearing no. 1930/2021 took place, then also Ismail Daudkhan Pathan was having no right to execute the mortgage deed in favour of defendant, because when Ismail Pathan has already sold the suit property to the present plaintiff, hence, Ismail Pathan was not competent to execute mortgage deed in favour of defendant, therefore, mortgage deed bearing no. 1930/2021 is not binding on plaintiff.

11. The learned advocate for the plaintiff has further argued that, description of boundaries mentioned in all mortgage deeds are different than that of property purchased by the plaintiff. Therefore, plaintiff has purchased the different property in the block no. 230, hence, there is no merit in the contention of the defendant that mortgage deed was executed in respect of present suit property. Even Ismail Pathan was alone competent to alienate the suit property, because, as per muslim law, family members of Ismail Pathan are not having any right over the suit property.

12. The learned advocate for the plaintiff has further argued that recital of registered sale deed showing that possession has been delivered to plaintiff. In support of his argument, he invited my attention towards the case of *A. N. Nagarajaiah Vs. B. Arvind & Ors. AIR 2014, (Kar.) 140*, wherein the Hon'ble Karnataka High Court while taking into consideration provisions of Order 39 Rule 2 of CPC has held that recitals of sale deed showing that possession has been delivered hence, prima-facie case of lawful possession has been made out by the plaintiff.

13. Lastly, the learned advocate for the plaintiff has argued that plaintiff is having prima-facie case, balance of convenience lies in favour of plaintiff, if the relief of injunction is not granted it will cause loss to the plaintiff, hence, he prayed to allow the application.

14. On the other hand, learned advocate for the defendant has argued that defendant is having long standing actual physical possession over the suit property. From year 2003, various registered mortgage deeds have been executed in between Ismail Pathan and defendant. Defendant has also spent amount of Rs. 1,50,000/-. The mortgage deed bearing no. 1579/2015 (exh. 17/2) is registered

document. As per the said deed, defendant was entitled to retain the possession till 22/06/2020 i.e. for the period of 5 years. Therefore, at the time of execution of alleged sale deed (exh.3/2) dated 06/03/2019, defendant was having interest over the suit property, hence, as per sale deed, possession cannot be delivered to plaintiff.

15. Learned advocate for the defendant has further argued that, wife of Ismail Pathan i.e. Shakila Pathan and her daughter Shabnam have raised objection before concerned Talathi of Village – Ghogaon stating that suit property had already been mortgaged in favour of present defendant and sale deed executed in between Ismail Pathan and Hasim Pathan is not binding, because, being the wife and daughter of Ismail Pathan, they are having right over the suit property. Therefore, Ismail Pathan alone was not competent to alienate suit property in favour of plaintiff.

16. Lastly, learned advocate for the defendant has argued that plaintiff has not come before the Court with clean hands and suppressed material facts from the court. Plaintiff has failed to made out prima-facie case, balance of convenience does not lies in favour of plaintiff. If the relief of injunction is granted it will cause more to the defendant rather than plaintiff. Hence, he prayed to allow the application.

17. No doubt, after perusal of sale deed (exh. 3/2) prima-facie it appears that boundaries of the suit property are appearing different than that of all mortgage deeds executed in between Ismail Pathan and defendant. However, case is at the stage of temporary injunction. Principle of injunction is based upon the concept of equity. Therefore, one who seeks the equity has to come before the court with clean hands. From the perusal of objection made to talathi

of village- Ghogaon by wife and daughter of Ismail Pathan regarding the fact that sale deed executed in between Ismail Pathan and his brother Hasim Pathan (plaintiff) is sham and bogus, Shakila Pathan and Shabnam Mulani being the wife and daughter of Ismail Pathan are having the right over the suit property. On this aspect as argued by learned advocate for the plaintiff that there is no concept of coparcener under muslim law and therefore Shakila Pathan and Shabnam Mulani are having no right over the suit property. Therefore, their objection does not required to be taken into consideration. Even for the sake of moment, it is assumed that they are having no right over the suit property and their objection made to talathi Ghogaon regarding not to create mutation entry in favour of plaintiff in respect of 7/12 extract of suit property, then also they have specifically admitted that Ismail Pathan had already executed mortgage deed bearing no. 1579/2015 and defendant is having the possession over the suit property. It would be appropriate to mention the particular portion as mentioned in the objection made to talathi which is as follows

तसेच सदर गट नं. २३० मधील श्री. ईस्माईल दाऊदखान पठाण यांचा सामाईक हिस्सा हा यापूर्वी रंगराव दादू गावडे रा. दुधोंडी यांना जादा मुदत खरेदी पत्र दि. २५/०६/२०१५ रोजी नोंद रजि. दस्त नं. १५७९/२०१५ अन्वये घेतलेला होता व आहे. तरी सदर रंगराव दादू गावडे यांची कब्जेवहिवाटीत असून सदर मुदत खरेदीपत्राची मुदत ही दि. २२/०६/२०२० पर्यंत आहे. तरी सदरचे खुषखरेदीपत्र हे पूर्णपणे बेकायदेशीर व पोकळ व बोगस स्वरूपाचे झालेले असून सदर श्री. हासीम दाऊदखान पठाण, रा.घोगाव यांच्या गाव दफ्तरी नोंदीस आमचा सक्त विरोध आहे.

18. As mentioned earlier prima-facie boundaries mentioned in the sale deed and mortgage deeds are different, but, after perusal of the said objection raised by the wife and daughter of Ismail Pathan, prima-facie it appears that before alienating suit property to plaintiff, Ismail Pathan had already executed the mortgage deed of same property. As per that mortgage deed defendant was entitled to retain the possession till 22/06/2020 and sale deed appears to have been executed on 08/03/2019. Apart from this, there is no pleading in the plaint regarding the description boundaries of suit property are different than that mortgage deeds. There is only description of suit property as mentioned in the sale deed. I have carefully gone through the document produced by learned advocate for plaintiff (exh. 19/1 to 19/3) such as mortgage deed, sale deed, index II extract, however it well settled principle that plaintiff has to stand or fall on his own legs and has to come with clean hands. Hence, on the basis of those document, plaintiff is not entitled for relief of injunction. Even there is no appropriate pleading made in the plaint.

19. Apart from this, if any ordinary prudent man is spending the amount of Rs. 4,20,000/- for purchasing the suit property then such person will make the proper inquiry before purchasing the property and such prudent man is expected to take proper precaution such as giving the public notice and taking the search report, but, plaintiff has failed to do so. Here, it must not be forgotten that all the mortgage deeds executed in the year 2003, 2015 and 2021 are registered mortgage deeds. There is principle of caveat emptor i.e. buyer beware. Prima-facie it appears that plaintiff has not followed the said principle. If the person is not coming before the court with clean hands then such a person is not entitled for relief of injunction. Therefore, I have no hesitation to say that plaintiff has failed to made

out prima-facie case, balance of convenience is also not in the favour of plaintiff, plaintiff failed to show irreparable loss. With respect to ratio laid down in *A. N. Nagarajaiah's* case is not helpful for the plaintiff. Therefore, I answer as to point no. 1 to 3 in negative. In answer to point no. 4, I pass the following order.

### **ORDER**

1. Application stands rejected.
2. Cost in main cause.

**Palus.**  
**Date- 17/11/2021.**

Sd/-  
**(N.D. Rudrabhate)**  
**Jt.Civil Judge Jr.Dn., Palus**

**CERTIFICATE**

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

Name of Stenographer : Pravin G. Sabale

Court : Jt. C.J.J.D. & J.M.F.C., Palus

Date : 17/11/2021

Signed by the Presiding Officer on : 17/11/2021

Uploaded on : 18/11/2021