

Order below Exh.05 in R.C.S. No.293/2019

1. The plaintiff has filed this interim application for restraining the defendant from disturbing his possession over the suit property till the disposal of the case.

2. As per the plaintiff, defendant was the owner and was in possession of the land at Gat No. 69/4, admeasuring 80 R, situated at village Anjansond, Taluka Pandharpur, District Solapur. In the year 2014, defendant went in financial crises. Therefore, he decided to sell his land admeasuring 3 R. Plaintiff came to know about it. Defendant agreed to sell him the land. Accordingly, defendant sold 3 R of his land to the plaintiff on 7.03.2014 for Rs. 1,80,000/-. The said property is the “*suit property*”. On the date of execution of sale deed, the plaintiff was put in possession of the suit property and since then he is possessing the suit property.

3. Defendant every now and then comes and disturbs the possession of plaintiff over the suit property. On 25.06.2019 at 10.00 a.m. when plaintiff was trying to construct a tin shed for animal on the suit property, defendant came and threatened him by saying as to how he utilities the property and he would not be allowed to construct any

tin shed. He then threatened him of filing Atrocity cases against him. Defendant also threatened and abused the family members of plaintiff. He also told plaintiff that he has filed a false case against him before the Revenue Authorities. The defendant has manpower and the plaintiff apprehends that by use of force, the defendant would dispossess him from the suit property. Hence, he has filed the present suit alongwith the application for restraining the defendant from disturbing his possession over the suit property, till the disposal of case.

4. Defendant filed his say cum written statement at Exh. 17. By denying all the allegations leveled against him, it is the specific case of the defendant that he was in need of money in the year 2014. He was in need of Rs.75,000/-. He then approached the plaintiff, who agreed to lent him money with a condition that he would execute a sale deed in favour of plaintiff with respect to the suit property as a surety for the transaction. Defendant agreed to the proposal. Accordingly, sale deed was executed by mentioning a consideration amount as Rs.1,80,000/-. Defendant repaid the entire amount of Rs.75,000/- to the plaintiff alongwith interest on it. He then requested the plaintiff to cancel the sale deed. However, plaintiff refused to cancel the sale deed. On the contrary, in the year 2019, plaintiff got his name mutated in the 7/12

extract of the suit property. Against such entry recorded, defendant has filed an Appeal before the Revenue Authority. Thus, defending that the present transaction is not a sale transaction but is money lending transaction the application is prayed to be rejected.

5. It is also defended that the sale deed dated 07.03.2014 is hit by provisions of the Maharashtra Prevention of Fragmentation and Consolidation Act. As per Section 31 (1) (A) and Section 8 of the said Act, no transactions can be effected with respect to the prohibited area of land. In case, if such transaction is entered into, permission of the proper authority is required. But the plaintiff has not obtained such permission. Hence, the sale deed dated 07.03.2014 executed is a illegal and void document and therefore, cannot be relied upon for claiming any relief with regard to the sale deed. Proper remedy is to apply before the revenue court. Thus application is also prayed to be rejected.

6. Following points arise for determination against which are my findings for the reasons stated below.

Sr. No.	POINTS	FINDINGS
1	Whether plaintiff has prima facie case in his favour ?	No.

2.	Whether balance of convenience lies in plaintiffs favour ?	No.
3.	Whether the plaintiff would suffer irreparable loss in case of rejection of the application ?	No.
4.	What order ?	As per the final order

REASONS

Point Nos.1 to 3

7. As the material pertaining to all the points is common, all the points are taken together for discussion.

8. In support of his contention, the plaintiff has relied upon the copy of sale deed dated 07.03.2014 (Exh.4/2), the 7/12 extract of the suit property (Exh.4/1), and copy of mutation entry No.1944 (Exh.4/3). Also, the plaintiff has relied upon a copy of permission obtained by him from the Sub Divisional Officer (SDO) Pandharpur (Exh.20/1). Relying upon the order of S.D.O. (Exh.20/1), it is argued by the plaintiff that he has obtained the required permission from the concerned officers and therefore the provisions under the Bombay Fragmentation and Consolidation Act are not application to the present case. The plaintiff has also relied upon the judgment of the Hon'ble Supreme Court in the case of Ramti Devi Vs. Union of India 95 SCC (1)

198 and it is argued that in the said judgment the Hon'ble Supreme Court has held that unless and until a document is declared to be void or is canceled, such registered document remains valid and binds the parties. Thus, it is the argument of the plaintiff that even if the sale deed is alleged to be null and void, it still binds the plaintiff as well as the defendant. Plaintiff has also relied upon the judgment of the Hon'ble Bombay High Court in the case of Baban Naik Vs. Pramila Yenare 2011 (6) All MR 15. Relying upon the para 8 of the Judgment it is argued that in the suit for perpetual injunction, it is to be looked into whether the plaintiff is in possession over the property or not. And if he is in possession, his possession is to be protected whether such possession is lawful or not.

9. Thus, it is the argument of the plaintiff that he is in possession of the suit property since the year 2014 which is the date of execution of the sale deed. Also it is argued that the sale deed is not hit by the provisions of the Bombay Fragmentation and Consolidation Act to reject his application.

10. The defendant, on the other hand, has relied upon a Government Notification dated on 14.03.2024 (Exh.24/1) vide which,

as argued, permission for regularizing any transaction hit by the provisions of the Fragmentation and Consolidation Act applies only with regard to the Well, Farm Road, for public purpose, or for the State Rural Housing Schemes or the Central Rural Housing Schemes for individual benefits. Apart from these criteria permission cannot be granted for any other purpose to regularize the transaction hit by the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. The defendant has also relied upon the judgment of the Hon'ble Supreme Court in the case of Preamsingh Vs. Birbal which is decided in Appeal (Civil) No. 2414/2006, wherein it is held that when a document is void and ab initio application for setting aside the same would not be necessary as the said document is not valid in the eyes of law.

11. Thus, it is argument of the defendant that the transaction executed as per the sale deed cannot be regularized as it does not fall under any of the grounds mentioned in the Maharashtra Government Notification 14.03.2024 (Exh.24/1). So also, it is the argument of the defendant that as sale deed itself is void document it cannot be considered for holding any ancillary rights. Accordingly, the application is prayed to be rejected.

12. It is an undisputed fact that the defendant has executed a sale deed dated 07.03.2014 in favour of the plaintiff. As per the contents of the said sale deed, defendant has sold the suit property to the plaintiff. This sale deed is in existence as on today as it is not set aside.

13. It is the case of defendant that the sale deed dated 07.03.2014 was executed as a security for money lending transaction. Plaintiff denies this fact. Whether the sale deed dated 7.03.2014 is a void document or not forms a part of detailed trial. Various circulars and notifications are filed by both the parties alleging the sale deed to be void or not. For deciding the authenticity of sale deed a detailed trial is required. In a suit for perpetual injunction praying for restraining the defendant from disturbing the possession of plaintiff over the suit property, the essential issue which is required to be determined is whether the plaintiff is in settled possession over the suit property, and whether his possession is disturbed at the hands of defendant.

14. As the plaintiff has filed the present suit, he is burdened to produce material showing that he is in settled possession over the suit property. He has pleaded that he is in possession over the suit property

since the date of execution of the sale deed i.e. 07.03.2014. However, there is no revenue entry or any material produced, at this juncture, to believe that the plaintiff is in possession over the suit property since 07.03.2014. The plaintiff has produced a 7/12 extract (Exh.4/1) which is dated 02.07.2019. As per this 7/12 extract, it appears that the plaintiff is in possession over the suit property since the year 2019. However, there is no material produced showing that he is in possession over the suit property since thereafter nor there is any material to hold that he is in possession over the suit property since prior to the year 2019. In order to hold that plaintiff is in continuous settled possession over the suit property, there has to be material to believe such contention. The sale deed dated 07.03.2014 mentions that the defendant has handed over the possession of the suit property on the date of sale deed. If these contents are true, there ought to be revenue entries with regard to the possession of plaintiff over the suit property since the year 2014. But there appears no such revenue record. So also, there does not appear, at this juncture, any material to hold that the plaintiff is in settled possession over the suit property from the year 2019 till today. Hence, at this juncture, it cannot be said that the plaintiff is in settled possession over the suit property. Resultantly, his application for restraining the defendants in disturbing his possession

over the suit property does not survive.

15. Thus, I hold that, the plaintiff has no *prima facie* case in his favour. Balance of convenience also does not lie in his favour, and he would not suffer irreparable loss in case of rejection of the application. Hence, I answer point Nos.1 to 3 in the negative.

As to point No.4.

16. In view of discussion above, I pass the following order.

~ ORDER ~

Application stands rejected.

Date : 18.11.2024.

Swayam S. Chopda.
Jt. C.J.J.D., Pandharpur

Certificate

- (a) Name of the Stenographer : Rajiv M. Gogi
- (b) Court. : Jt. C.J.J.D., Pandharpur
- (c) order dictated on : 18.11.2024
- (d) signed on : 27.11.2024

