

ORDER BELOW EXH.05 IN R.C.S.NO. 506 of 2014
(PASSED ON 17th DAY OF OCTOBER- 2015)

Malikarjun B. Swami,
V/s.

..... Plaintiff.

Narayan S. Kakade,

..... Defendant.

This is an application filed by the plaintiff vide Order 39 Rule 1 of the Code of Civil Procedure seeking to restrain defendant from obstructing possession of plaintiff over plot No.42 out of Gat No.1088/b as described in plaint para No.1 (in brief '*suit plot*'). In short, facts necessary for disposal of application are as following :

02] Suit plot is originally owned by one *Sunil Rangnah Mohite*, who has sold it to defendant. Defendant executed an *affidavit-cum-sale deed* for consideration of Rs.30,000/- and put plaintiff in possession of suit plot permanently. Since then plaintiff become possessor. As suit plot is demarcated under scheme of *Mahada* for Lower income group, sale deed could not be executed. After so called purchase, plaintiff erected *tin-shed* and on 20/6/2009 also applied for getting a subsidy for construction of a toilet under government scheme and deposited fee of Rs.1000/-. In this way plaintiff is residing in the suit plot. In view of hike in prices of properties, the defendant obstructing plaintiff's possession. Thus, plaintiff constrained to file suit along with present application. Plaintiff contended that he has *prima-facie* case and balance of convenience. If he dispossessed he would suffer irreparable losses.

03] Defendant resisted suit claim vide say and written statement at Exh.12. The defendant disputed the so called sale deed of plaintiff and submitted that he has purchased suit plot from original owner on 04/05/2009 vide registered sale deed. Thus, when the affidavit was executed in favour of plaintiff, defendant have had no title. As such, said document, a affidavit is void *ab-initio* and cannot be acted upon. According to defendant, plaintiff has suppressed material facts and filed suit to enter into possession. It is his specific case that since from

the year 2006 defendant is in possession of plot No.42 and 43. He has erected tin-shed and running his business under name '*Shivkrupa Vividha Vastu Bhandar*'. Thus, it is case of defendant that plaintiff has no title even no possession and thus there is no question of any obstruction. Accordingly, sought to reject the application,

04] Having heard both sides at length and having gone through the pleadings and documents on record following points arises for my consideration. I have recorded my findings thereon for the reasons stated thereunder :

SR.NO.	POINTS	FINDINGS
01]	Whether plaintiff has made out <i>prima-facie</i> case?	In the Affirmative.
02]	Whether balance of convenience lies in favour of plaintiff ?	In the Affirmative.
03]	Whether plaintiff suffers irreparable losses, if injunction rejected?	In the Affirmative.
04]	What order?	AS PER FINAL ORDER

R E A S O N S

AS TO POINT NO.01 TO 04 :

05] The defendant has merely denied the affidavit executed before *Tahasildar*. A perusal of which, shows that defendant himself executed said document and put plaintiff in possession accepting Rs.30,000/- as consideration. No doubt, said document does not transfer title as same is not registered one. Thus, no title passes to plaintiff. Plaintiff himself come with the pleadings that sale deed could not be executed as suit plot is demarcated under scheme of Mahada for lower Income Group. Thus, plaintiff has not claimed any ownership or title in the suit and therefore, has not sought declaration as to the ownership. Plaintiff has only brought suit for injunction on the basis of his possession. Thus, the dispute raised by defendant about title is of no use as plaintiff has not claimed

title. Thus, the decisions in cases of *Attaur Raheman Fateh Mohmmad V. Hari Peeraji Burud Lrs. Neelabai @ Chandrakala Haribhau and others* reported in *2008(2) Mh.L.J. 633*, *Vimal Chand Ghevarachand Jain and others vs. Ramakant Eknath Jadoo* reported in *2009 (5) Mh.L.J. 597* *Maruthamuthu Vs. Kaliaperumal & others* reported in *2011 AIR CC 1324 (Mad)* relied upon by the defendant during arguments are being in respect title are applicable at the time of final decision of suit and not in respect of passing order of temporary injunction. Those are not relevant and applicable to the facts and peculiar circumstances of the present case. Thus, need no consideration.

06] In order to decide application Exh.5, the Court is only suppose to see *prima-facie* case. It is only required to see as to whether plaintiff is in possession, be it legal or illegal. Plaintiff seems to be in possession from the date of execution of the document dated 22/9/2008. Nowhere in the pleadings defendant explained as to why this document is executed. It is only pleaded that said document is void *ab-initio* and does not pass title and therefore cannot be acted upon. This, pleadings of defendant found to be insufficient and not correct. If defendant is not intending to sale out the suit plot and when in fact he did not have any title, why he executed said sham document is to be explained only by the defendant. When defendant avoiding to make any statement as to what prompts him or tempts him to execute such documents, he cannot be permitted to deny the same, being a party in *pari-delicto*. Defendant also seems to have accepted consideration of Rs.30,000/-. Thus, in the absence of any evidence as to re-transfer of possession to defendant after said transaction, it cannot be said that defendant is in possession.

07] In these circumstances, *prima-facie* it is found that plaintiff is in possession on the basis of said document through he does not have title. Other documents as to the receipts regarding availing facility of toilet appears to have no number of plot. Thus, same is found to be irrelevant. So also, the documents filed by the defendants regarding his possession i.e. Shop Act license same

receipts, photographs etc. also does not bear number of the suit plot. Thus found to be irrelevant.

08] Defendant pleaded that he has only purchased suit plot from original owner on 4/5/2009 and thus he has no title to execute such affidavit. But as already observed above plaintiff has not claimed title and his case is only based on possession. Dispute raised by the defendant as to the title is thus misplaced. Secondly, defendant himself pleaded in Para No.6 of the written statement that since from 2006 he is in possession of plot No.42 and 43 jointly and running his so called Business. Thus, these pleadings shows that through defendant had no title, he was in possession and for the best reason known to him he transferred his possession to plaintiff executing affidavit accepting consideration.

09] While deciding present application, this Court has no scope to go into merit of the documents as it is the matter of hearing after evidence. It is thus necessary to give face value to the documents on record and to interpret the same according to its contents together with the conduct of the parties, which *prima-facie* shows possession of the plaintiff. Thus, plaintiff has *prima-facie* case to claim injunction against unlawful eviction. Pleadings and say of defendants shows that he must have obstructed the possession of plaintiff and thus balance of convenience lies in favour of plaintiff and if plaintiff outs, he would suffer from irreparable losses. Defendant being obtained title later on could obtain possession following due process of law. Thus, he must be restrained from obstructing possession without following due process of law. Accordingly, I answer points under consideration and pass following order.

ORDER

1 Application Exh.05 is allowed.

2. Defendant or anybody claiming through him are hereby restrained by an order of temporary injunction that he shall not obstruct possession of plaintiff over suit plot without following due process of law till final disposal of suit or further order, whichever is earlier.
- 3 Costs in cause of application.

Date: 17th Oct. 2015.

(***Sudhir N. Shinde***)
Jt. Civil Judge, Junior Division,
Barshi.

CERTIFICATE

I affirm that the contents of the PDF filed Order are same word to word, as per the original Order/Judgment.

Name of Stenographer	: Bhaskar G.B.
Court	: Jt. Civil Judge J. D., Barshi
Order signed the	:17/10/2015
presiding Officer on	
<i>Order uploaded on</i>	<i>:19/10/2015</i>

