

Order Below Exhibit 05 In R.C.S. No. 711/2011

1. This an application filed under Order 39 Rule 1 and 2 of Code of Civil Procedure contending that the plaintiff is the owner of the suit property, purchased from the trust. Defendant is in illegal possession of the property. It is the case of that, defendant came in to possession of suit property illegally, having no authority since 1987-89. The have purchased the suit property in year 2005 and asked the defendant and to show their title but he refused with false allegations. The defendant intending to change the nature of suit property and also intending to alienate the same. It is the contention of that, if the defendant succeeded to change the nature of the property and to alienate the same, the irreparable loss will cause. Hence, they prayed to file this suit for recovery of possession with this application restraining the defendant from changing the nature of suit property and from alienating or creating third party interest in the suit property.

2. In response to the suit summons defendant appeared, filed his reply at exhibit 18 denying the allegations made by them. He contended that, he is tenant of suit property. Previously predecessor in title of had file Regular Civil Suit bearing No. 627/2010 against present defendant with intent to harras, which came to be dismissed in default. According to the defendant he is in possession since last 30 year, his name is entered in to relevant record of municipality. It is his contention that the suit property is only place of earning. Hence, he prayed for rejection of application.

3. Having regards to the rival contentions of the parties, following point arise for my determination and I recorded

my findings thereon for the reasons given below :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaintiff made out <i>prima facie</i> case?	Affirmative.
2.	Whether the balance of convenience lies in favour of the plaintiff?	Affirmative.
3.	Whether irreparable loss would be caused to the plaintiff, if temporary injunction as prayed for is refused?	Affirmative.
4.	What order?	As per final order.

R E A S O N S

As to point No. 1 to 3 :-

4. Heard rival parties. Perused record minutely. According to the , the defendant is trespasser, on the contrary it is the contention of defendant that he is tenant. While deciding the interim application, it is only issue whether the defendant is intending to create their party interest or change the structure of property. It is argued by counsel of defendant that there is no intention on record that the defendant is trying to alienate or change the nature of suit or trying to sale the property. Per contra, it is submitted by the counsel of that, to avoid the multiplicity of proceeding, it is necessary to restrain the defendant from alienating and creating change in the nature. The counsel of defendant strengthening upon the defence pleaded in the written statement. To my mind it may be helpful during trial. So as to intention is concern, the acute resistance on the part of defendant shows his hostile intention towards the title of plaintiffs. Thus, *prima facie* there is hostile intention of defendant towards the suit property which give substance to the apprehension of plaintiff.

5. Apart from this position, the counsel of is filed xerox copy of Misc. Civil Appeal No. 63/12. The said suit is also filed by present against the possessor of the property which is owned by them having same facts like the present matter. In the judgment of Hon'ble District Court, it is observed that the inference of intention required to be draw from their pleadings and restrained the defendant from creating third party interest or change in the nature. The fact of present suit and the suit R.C.S. No. 6/09 are same. It is desirable and necessary to adopt the views of Hon'ble District Court. Consequently, succeeded to establish *prima facie* case and balance of convenience lies in their favour. To avoid multiplicity of litigation it is just and proper to restrain the parties from alienating the property as well as it will cause irreparable loss. Hence, I answer point no. 1 to 3 in **Affirmative** and proceed to pass the following order .

ORDER

1. Application (Exh. 05) allowed.
2. The defendant is hereby temporary restrained from creating third party interest in the suit property till disposal of suit.
3. The defendant is also hereby temporary restrained from changing the nature of suit property which is in his possession till disposal of suit.
4. Costs in cause.

Dated:-12-02-2013

(SK.Akbar Sk.Jafar)
Jt.Civil Judge,J.D.Barshi.