

Reg. Civ. Suit. No. 131/2021

ORDER BELOW EXH. 5

(Date 17.11.2022)

This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, to temporarily prevent the defendant from obstructing the plaintiff personally or through others from cultivating the suit property.

2. The land at Gat No. 317/1/B/1/B/2/B admeasuring about 00 H 86 R from Village Degaon, Taluka Mohol, District Solapur, more particularly described in para 1 of the plaint, is the suit property.

3. Brief facts of the Case:

The suit property belonged to the defendant. In the year 2017, the defendant was in need of money, he asked the plaintiff to buy the land. Considering the good relations the plaintiff agrees to the same. Accordingly, on 05.07.2017 the defendant sold land admeasuring about 00H 40 R out of the suit property to the plaintiff for the consideration of Rs. 3,30,000/-. At the time of execution of the sale deed, the defendant gave possession of the said land to the plaintiff.

4. In the year 2018 the defendant once again approached the plaintiff and asked him to buy the remaining land out of the suit property, as he was in need of money. Accordingly, on 04.01.2018 the defendant sold the remaining land admeasuring about 00H 46 R to the plaintiff, out of the suit property, for the consideration of

Rs. 3,20,000/-. At the time of execution of the sale deed, the defendant gave possession of the remaining suit property to the plaintiff.

5. The plaintiff became the owner of the suit property, vide two different sale deeds. Accordingly, the name of the plaintiff is mutated on the 7/12 extract. The plaintiff has improved the texture of the land after repairing the land and irrigating the land. After the purchase, the defendant fixed the boundary of the dam by making measurements by a private surveyor. Accordingly, the plaintiff has fenced the boundary from all four sides. On 13.02.2021, the plaintiff went to irrigate the sorghum crop, and the defendant unlawfully entered the suit property and blocked the borewell owned by the plaintiff. The plaintiff explained to the defendant, but the defendant was in no mood to listen, on the other hand, the defendant threatens the plaintiff, to file a case of atrocity if he do not execute the sale deed in his favour. Therefore, the plaintiff filed a suit for a permanent injunction against the defendant, so as not to obstruct the plaintiff from cultivating the suit property. And by way of this application, the plaintiff prayed for a temporary injunction so as to prevent the defendant from obstructing the plaintiff personally or through others from cultivating the suit property.

6. The defendant filed his say and written statement at Exh. 16 and contended that the defendant, his wife, and children earned money and for the joint family they purchased the suit property in the name of the defendant vide sale deed on 03.09.1994 and also

took one borewell. Also, three rooms and one bathroom have been constructed and are being occupied. 8 to 10 lakh rupees have been spent on the construction of the said house. The suit property was and is being cultivated on the common well water for the last 50 years and the suit property was previously fenced. The price of the suit property was Rs. 12 to 15 lakhs per acre.

7. The plaintiff and his wife are engaged in a non-licensed money-lending business. In the year 2014, the defendant and his family are in need of 2 lakhs rupees. Therefore the defendant approached the plaintiff and his wife for the loan. At that time the defendant availed a loan of Rs. 2 lakhs, at the rate of 5% interest per month, from the plaintiff and his wife, by executing the sale deed of the suit property in favour of the Amar Nalawade for the security purpose. After repayment of the loan amount with interest, on the request of the plaintiff and his wife, Amar Nalawade executed a sale deed, in favour of the defendant.

8. In the years 2017 and 2018 the defendant was in need of Rs. 70,000/- and Rs. 1,30,000/- respectively. Therefore the defendant availed said amount from the plaintiff, by executing two different sale deeds dated 05.07.2017 and dated 04.01.2018 of the suit property, for the purpose of the security of the loan amount, on the condition that after payment of the loan amount the plaintiff will re-transfer the suit property in favour of the defendant. The rate of interest decided between the plaintiff, her husband, and the defendant is 5% per month. After repayment of the loan amount with interest, the defendant demanded a re-transfer of the

suit property to the plaintiff and his husband. They refused to re-transfer the suit property and demanded extra 9 lakhs rupees from the defendant. Therefore, the defendant filed a complaint on 10.12.2019 of suit No. 6/2019 against the plaintiff and her husband before the District Register of Moneylenders and District Deputy Register Solapur. The said case is pending. The concerned officer also conducted spot panchnama and it is found that the defendant is in possession of the suit property.

9. On the suit property there is a house of the defendant and the defendant is residing in that house along with his family. The defendant is in the possession of the suit property. The sale deeds executed by the defendant in favour of the plaintiff are not valid. Hence prayed for the rejection of the application.

10. Following are the points for determination along with my findings thereon for the reasons to follow:

No.	Points	Findings
1.	Whether the plaintiff has a prima facie case?	No.
2.	Whether the balance of convenience lies in favour of the plaintiff?	No.
3.	Whether the plaintiff would suffer irreparable loss if the application is rejected?	No.
4.	What order?	The application is rejected.

REASONS

AS TO POINTS NO. 1 TO 3:

11. These points being interlinked are discussed together. The plaintiff has filed this suit claiming a permanent injunction. Heard learned advocate for the plaintiff Shri. H. B. Shinde and learned advocate for the defendant Shri. T. D. Aglave. Learned advocate for the plaintiff submitted that the plaintiff has purchased the suit property from the defendant for valid consideration. There is a clause in the agreement where the defendant has given possession of the suit property to the plaintiff. As the defendant is claiming that the said transaction is money lending but there is no clause regarding the defendant having taken a loan from the plaintiff and for the security of that loan amount two sale deeds have been executed. The plaintiff disputed the possession of the defendant over the suit property.

12. On the other hand learned advocate for the defendant submitted that the said transaction was entered by the defendant out of the money lending. The two different sale deeds are only executed for security purposes. The defendant never parted with the possession of the suit property. He further submitted that the case is pending against the plaintiff and her husband regarding money lending, therefore the plaintiff has filed a present false case against the defendant. In the case before District Registrar and on his direction the competent authority as well made a spot panchnama. He gave a finding that the defendant is in possession

of the suit property and one house property of the defendant is on the suit property.

13. A Prima facie case does not mean that it must be shown in all probability that the plaintiff would succeed in the suit. But it must be shown by the plaintiff that he/she has a bona fide question to raise as to the existence of the right he/she claims and that it is necessary for the interest of justice to preserve the said right till legal rights and conflicting claims of the parties before the court is adjudicated. A temporary injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition.

14. From a perusal of the contentions made by both parties, it appears that both parties have admitted the execution of two sale deeds. The only issue is whether those sale deeds are made out of money lending transactions or whether it is a sale transaction.

15. The plaintiff has produced the registered sale deeds which are duly registered in the office of the Sub-Registrar at Serial No. 2476/2017 and 39/2018. As per the recitals of the sale deed, the defendant has given possession of the suit property to the plaintiff. It appears that the said sale deeds were executed for consideration. The plaintiff also produced a bank account statement of Subhash Shahaji Patil which shows that Subhash Patil has paid Rs. 30,000/- to the defendant. No doubt the registered sale deed has a presumptive value and even at this primary stage sections 91 and 92 of the Indian Evidence Act can be invoked. Section 92 of the Indian Evidence Act prohibits the parties to the

document or their representatives to give oral evidence to change the terms of the contract.

16. However, the intention of parties to the contract is most material. If the defendant is containing that he was in need of money and he approaches the plaintiff and the plaintiff agrees to give money as a hand loan but demands security in the form of sale deeds and if it is also agreed between parties that the plaintiff will re-transfer the property after payment of money. In such case, the defendant is permitted to prove that parties never entered into sale deeds and whatever was written in the agreement was never agreed between the parties.

17. According to the defendant, the plaintiff and his husband engaged in a money-lending business. He was in need of money therefore for security purposes he executed two different sale deeds for the loan availed by him from the plaintiff and her husband. In order to defend his case, the defendant has produced a Complaint copy filed before the District Registrar regarding the plaintiff's engagement in a money lending business, a copy of Spot panchnama dated 10.12.2020 conducted by the District Deputy Register through its Authorised officer. As per the spot panchnama dated 10.12.2020 conducted by the District Deputy Registrar the defendant is in possession of the suit property.

18. Learned advocate for the plaintiff argued that the said panchnama is not valid. As there is no seizure of documents or there is no provision in law to conduct such spot panchnama of land. He further argued that all panch to said panchnama is

related to the defendant. Therefore the said panchnama is not valid. On the other hand, the learned advocate for the defendant submitted that section 18 of the Maharashtra Money Lending (Regulation) Act deals with regard to the spot inspection by the officer in order to enquire about the money lending transaction.

19. With that regard Rule 17 of the Maharashtra Money Lending (Regulation) Rules, 2014 brings the immovable properties within the ambit of the Maharashtra Money Lending (Regulation) Act, 2014 and vests powers in the District Registrar to cause an inquiry into the nature of the transaction. The manner in which District Registrar can exercise powers is enumerated under section 18 of the Maharashtra Money Lending (Regulation) Act, 2014. The same is reproduced below:

Section 18: Return of immovable property acquired in course of money-lending:

(1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or otherwise, within a period of five years from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money-lender as a security for loan advanced by the money-lender in course of money-lending, the

District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

(3) Before passing an order or giving decision as per sub-section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

(4) Any person aggrieved by the order or decision of the District Registrar under sub-section (2) may, within one month from the date of order or decision, appeal to the Divisional Registrar:

Provided that, the Divisional Registrar may admit the appeal after expiry of the period of one month, if the appellant satisfies him that he had sufficient cause for not preferring the appeal within the period.

(5) The order passed by the Divisional Registrar in appeal preferred under sub-section (4) shall be final.

(6) Subject to the appeal provided under sub-section (4), the order passed or decisions given by the District Registrar under sub-section (2), shall be sufficient conveyance and it shall be the duty of every officer entrusted with the work relating to maintenance of land records under the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), or under any other law for the time being in force, to give effect to such order in his records.

20. Therefore, in the case in hand Shri. Rahi Shaikh, Authorized officer, on the direction of the office of District Deputy Register, Solapur, conducted the spot panchnama to enquire about money lending transaction. As mentioned earlier, panchnama reveals that the defendant is in possession of the suit property and the transaction between the plaintiff and the defendant is a money-lending transaction. The said fact is supported by the affidavit of witness Sagun Dagdu Randive. He is also a witness to the alleged sale deeds. According to the plaintiff, he is an interested witness and is a relative of the defendant.

21. At this stage factum of possession is very important. Panchnama reveals that on the suit property there is a house of the defendant and the house of the defendant is constructed under the Gharkul Yojna. Panchnama also reveals that there is no coming and going of the plaintiff on the suit property. A perusal of documents on record, it also appears that the plaintiff is a resident of the village Waluj and the defendant is a resident of the village Degaon. The suit property is situated where the defendant resides. A panchnam or spot inspection conducted by a government official has a higher degree of value while looking at the prima facie case than recitals of the sale deeds. Therefore, prima facie it appears that the defendant is in possession of the suit property and prima facie it also appears that the transaction between the plaintiff and the defendant is a money lending transaction.

22. An injunction to restrain obstruction in possession of a property can be granted when the party praying for the injunction shows that he/she is in possession and that the other party is trying to obstruct such possession. In the case in hand, the plaintiff failed to show his prima facie possession over the suit property.

23. The party which seeks relief of temporary injunction, not only has to establish a prima facie case but also the irreparable non-compensable loss that would be caused in case of denial of interim injunction and that the balance of convenience lies in his/her favour. As the plaintiff failed to show his possession over the suit property, in such case if the injunction is granted the defendant would suffer an irreparable loss and therefore the

balance of convenience also lies in favour of the defendant. Hence I answer points no. 1 to 3 in the negative.

AS TO POINT NO. 4

24. Considering material placed on record for the purpose of this application and considering the arguments advanced by the learned advocates representing the parties, it becomes clear that the application deserves to be rejected. The observations made in the order are restricted to this application only. Hence, in the result and in answer to point no. 4, I pass following order:

ORDER

The application at Exh. 5 is rejected.

Solapur

Date: 17.11.2022

(R. R. Jadhav)

2nd Jt. Civil Judge Junior Division,
Mohol.