

Order below Exh. 5 in RCS No. 155/2011**Shankar Vs. Dronacharya**

The plaintiffs have filed present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908. They have claimed that, by way of temporary injunction, the defendants be restrained from interfering their possession over the suit property.

The application in short is as under :

2] The suit is instituted in respect of landed property situated at village Wawarhire, Tal. Man, Dist. Satara bearing block No.1360 total area 3 H 82 R, area of plaintiff is 40 R. Said property is hereinafter referred to as “the suit property”.

3] The suit property was ancestral property of defendant No.1. He had taken loan from credit society and there was liability of him to pay money of other people. Therefore, he was in need of money. Hence, he decided to sell the suit property. The discussion took place between the plaintiffs and defendant No.1. The defendant No.1 agreed to sell the suit property for Rs.1,50,000/-. Accordingly, on payment of consideration, sale-deed is executed on 28/01/2009. The plaintiffs received possession of the suit property on the same day. Name of the plaintiff No.1 is recorded to the record of right of the suit property. The plaintiffs are enjoying possession of the suit property. Under these circumstances the defendants are obstruction plaintiffs' possession over the suit

property. Therefore, the defendants be restrained from interfering with plaintiffs possession over the suit property.

4] The defendants have filed their written statement-cum-say to present application at Exh.13. They have denied allegations in the application. It is not in dispute that the suit property is ancestral property of the defendants and he had loan liability. It is contended that, to repay the loan of the defendant No.1 he talked with brother of the plaintiff No.2. The brother of plaintiff No.2 was cultivating the suit property on lease. The defendant was to pay loan of Rs.50,000/-, therefore the brother of plaintiff No.2 agreed to give that amount and it was decided to have mortgage of the suit property. It was agreed that, the defendant should repay the amount whenever he will get that amount and get re-conveyance deed executed. But when parties went to the sub-registrar office, they came to know that, deed in such way cannot be registered, as government value of the suit property is very high. Therefore, it was decided to have execution of the sale-deed of Rs.1,50,000/-. In fact it was a transaction of mortgage. Therefore possession of the suit property was not transferred to the plaintiffs. The defendants' possession over the suit property is continue till yet. Hence there is no question of interfering with plaintiffs possession. The defendants have home and cattle-shed in the suit property. They reside there since last 5 years. The defendants have told to the plaintiff to get that money back and get the re-conveyance deed executed. But they have denied for the same, therefore application be rejected.

5] Considering rival contentions, following points arise for my consideration. I have answered them for the reasons mentioned below.

Sr.No.	POINTS	FINDINGS
1	Whether the plaintiffs have <i>prima-facie</i> case ?	Yes
2	Whether the balance of convenience lies in favour of the plaintiffs ?	Yes
3	Whether the plaintiffs will suffer irreparable loss if injunction as prayed is not granted ?	Yes
4	What order ?	As per final order.

REASONS

6] In order to support their contentions, the plaintiffs have filed 7 x 12 extract of the suit property at Exh.7, original sale-deed, affidavit of plaintiff No.2 Baban at Exh.6. To support their contentions the defendants have filed affidavits of Hari Shankar Sutar and Sopan Dnyanu Savarde and three photographs.

As to Points No.1 to 3 :-

7] All these points are interconnected, therefore they are taken together for discussion.

8] Learned advocate for the plaintiffs Shri. R. B. Kale submits that, the transaction between plaintiff and defendant was

clearly of sale-deed. The sale-deed is executed in the year 2009. As per said sale-deed name of the plaintiff No.1 has been recorded to the record of right of the suit property. The defendants have not challenged the sale-deed and its entry to the record of right of the suit property till the year 2016. It shows that, they have consent for said transaction. There is nothing on record to accept contention of the defendant that it was a transaction of mortgage. It is specifically mentioned in the sale-deed that, possession of the suit property has been transferred to the plaintiff. Therefore, the sale-deed, entries in 7 x 12 extract and affidavit of plaintiff shows that, plaintiffs are in possession over the suit property. The defendants have obstructed said possession, hence application deserves to be allowed.

9] Learned advocate Shri. V.Y.Kale for the defendants submits that the transaction between parties was transaction of mortgage. It was not transaction of sale-deed. Possession of the defendant is continued. It was not transferred to the plaintiffs. There are two important persons from said village i.e. Hari Sutar and Sopan Savarde. They have stated on affidavit that, the defendants are in possession over the suit property. The photographs also shows that, there is possession of the defendant over the suit property. Hence, there is no question of plaintiffs possession and obstruction. Hence, application be rejected.

10] Prima-facie it has to be decided that, what was the nature of the transaction between the parties. There is copy of sale-deed. It shows that, the defendant No.1 Dronacharya has

executed sale-deed in favour of plaintiff No.1 Shankar on 28/01/2009 in consideration of Rs.1,50,000/-. It is mentioned that, the possession of the suit property has been transferred according to the sale-deed. The 7 x 12 extract of the suit property at Exh.7 shows that, there is name of plaintiff No.1 to the extent of area purchased by him. Affidavit of plaintiff Baban shows that, the plaintiff Shankar has purchased the suit property. The defendants contention is that, it was not a transaction of sale-deed but it was a mortgage-deed. It is necessary to mention that, said sale-deed has taken place on 28/01/2009. There is nothing on record to show that, till today the defendants have made grievance about the execution of said sale-deed and its legality, except in the written statement. Therefore it is clear that near of for eight years the defendants have not challenged the sale-deed. It prima-facie shows that, they have accepted said sale-deed and its entry to the record of right of the suit property. This conduct is very material one. On the contrary, execution of sale-deed is not denied by the defendant. Therefore prima-facie there is nothing on record to show that said transaction was of mortgage-deed and not of sale-deed. Therefore, I prima-facie find that the transaction between parties was of sale-deed.

11] The next question is whether the plaintiffs are in possession over the suit property. It is not in dispute that, the plaintiff No.1 is son of plaintiff No.2. he has filed affidavit at Exh.6. It shows that the plaintiffs are in possession over the suit property. Their contentions have been supported by sale-deed and 7 x 12 extract of the suit property. There is nothing to discard said

affidavits, sale-deed and entries in 7 x 12 extract.

12] The defendants have contended that, they are in possession over the suit property. To support their contentions they have filed affidavit of Hari Sutar and Sopan Savarde. They have stated that, the suit property is in possession of the defendants. There is cattle-shed and home of the defendant. It is necessary to mention that, it is oral contention of these two witnesses. It is contrary to sale-deed and 7 x 12 extract i.e. revenue entries. When revenue entries are supported by registered document, they are having presumptive value. Therefore presumption lies in favour of possession of plaintiff. Said presumption cannot be rebutted by oral submission of the witnesses. These witnesses are making statements contrary to the registered document and revenue record. Hence, their statements cannot be accepted. The defendants have filed three photographs to show that, they are in possession over the suit property. There is nothing on record to show that, these photographs are of the suit property. Moreover, for reasons mentioned above, it is clear that the plaintiffs have prima-facie proved their possession by sale-deed and 7 x 12 extract. Therefore, also these photographs are not helpful to the defendant.

13] Considering the above discussion prima-facie I find that, the plaintiffs are in possession over the suit property, as their evidence on this point is acceptable and defendants' evidence is not acceptable.

14] The plaintiffs have specifically contended that, the defendants are obstructing their possession over the suit property. The affidavit of plaintiff No. 2 Baban supports said fact. The defendants have denied possession of the plaintiff over the suit property, when prima-facie plaintiffs' possession has come on record. It also shows that, the defendants are interested to interfere with plaintiffs possession over the suit property. Therefore, I prima-facie find that, the defendants are interfering with plaintiffs' possession over the suit property.

15] Considering the above discussion, it is clear that, prima-facie the plaintiffs have acquired possession and ownership over the suit property as per sale-deed. It is continued till yet and defendants are obstructing their possession. Hence the plaintiffs have prima-facie case. If injunction is not granted , the defendants may interfere with the plaintiffs possession. It will cause hardship to the plaintiff.

16] The plaintiffs have paid consideration amount to the defendant. They have right to possession over the suit property. In such situation if injunction is not granted , it will cause hardship to the plaintiffs. Hence there will not be any hardship to the defendants. Moreover, loss caused by such interference will be such loss which cannot be compensated in terms of money. Therefore, I find that, the plaintiffs have prima-facie case, balance of convenience lies in their favour and if injunction is not granted , they will face irreparable loss, which cannot be compensated in

terms of money. Hence, I answer point Nos. 1 to 3 in the affirmative.

As to Point No.4 :-

17] Considering the above discussion, it is clear that, the plaintiffs are entitled for temporary injunction. Therefore, in answer to present point, I proceed to pass order as under.

ORDER

- 1] Application is allowed with costs.
- 2] The defendants or anyone on their behalf, are hereby temporarily restrained from interfering with plaintiffs' possession over the suit property, till final disposal of the suit.

Dahiwadi

Date: 06/01/2017

(S.S.Deshmukh)
Jt.Civil Judge, J.D.Dahiwadi