

ORDER BELOW EXH.5 IN REG.CIVIL SUIT NO.126/13

1] In suit for specific performance of an agreement of sale and perpetual injunction the plaintiffs have moved this application for temporary injunction for restraining defendants from alienating and obstructing their possession over the suit property.

2] Plaintiffs' case is as under :-

A] H 0.8 R share in non-agricultural land No.1055 admeasuring H 0.63.43 R and potkharab 0.63R situated at mauze Waroonji, taluka Karad, district Satara, more particularly described in para 1 of the plaint is the subject matter of the suit and this application (henceforth referred to as "the suit property" for short).

B] In the year 2000 the defendants were in need of money. Therefore, they approached the plaintiffs for requesting purchase of the suit property. The negotiation resulted into concluded agreement for sale. The defendants agreed to sale the suit property for the consideration of Rs. 4,04,000/- and accordingly the defendants executed registered agreement for sale with possession bearing No. 1804/01(साठेखत) and handed over the possession of the suit property on 25/04/2001. The defendants have time to time received Rs.3,40,000/- from the plaintiffs in consideration and agreed to execute sale deed after receiving remaining Rs.64,000/-. On 20/10/2008 the plaintiffs issued notice to the defendant for asking execution of sale deed. After receiving the said notice defendant nos. 2 to 4 met the plaintiffs and asked for some time. Again on 04/01/2013 the defendant nos. 2 to 4 tried to encroach upon the suit property. Therefore, the plaintiffs sent them second notice on 05/01/2013 for performance of agreement. The defendants falsely replied to the said notice and cut-down cable fence of the suit property. Therefore, the

plaintiffs have filed this suit and moved this application for restraining the defendants from obstructing their possession and alienating the suit property.

3] The defendants have resisted the application by filing their say vide Exh. 23. The defendants have contended that they have executed agreement for sale on 25/04/2001 but, the said agreement is without consideration and possession. The plaintiffs are political person. By taking undue advantage of their political influence they got executed agreement for sale from the defendants. The possession of the suit property was never handed over to the plaintiffs. The defendants are in possession of the suit property and they are enjoying possession as owner. The defendants have also alternatively contended that even assuming that the agreement for sale was acted upon, the suit is not within limitation. Therefore, the plaintiffs have no prima facie case. Hence, the defendants have prayed for rejection of the application.

4] Perused the record. Heard learned counsel for both the parties. Following points arise for my determination and I have recorded my findings thereon with the reasons as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether prima facie case lies in favour of the plaintiffs ?	... Yes.
2) Whether balance of convenience lies in favour of the plaintiffs ?	... Yes.
3) Whether irreparable loss would caused to the plaintiffs if injunction is refused ?	... Yes.
4) What order ?	... Application is allowed.

REASONS

As To Points No.1 :-

5] This suit is for specific performance of an agreement and permanent injunction. The plaintiffs are claiming possession over the suit property on the basis of registered agreement dated 25/04/2001. For the decision of this application it is necessary to see whether the prima facie case lies in favour of the plaintiffs. Prima facie case means a good arguable case i.e. , there should be sufficient material to go for trial. The Hon'ble Bombay High Court in the case of **Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare & Anr., 2011(6) All MR 15** held that at the time of considering the application for interim relief of injunction, possession is only relevant matter. Whether the possession is legal or illegal can be decided in the trial. In the light of these settled principles I move to the factual aspect of the case.

6] To show their possession the plaintiffs have heavily relied upon the agreement dated 25/04/2001 (Exh. 3/3) and entry in the assessment list (Exh.9) (Form No. 8) of the year 2009 and 2010 of village Varunji.

7] The defendants have contended that the plaintiffs are political person in the village. By taking undue advantage of their political influence they got executed the agreement of sale from the defendant. Entry in the Grampanchayat record is illegal. In this regard the defendants have placed reliance upon application made by the plaintiffs dated 08/10/2009 (Exh. 28/3), photocopy of copy of Grampanchayat resolution No.3(185)dated 16/10/2009 (Exh. 28/5), certificate issued by the Grampanchayat Varunji (Exh. 28/5), copy of appeal filed against resolution No. 6(185) dated 16/10/2009.

8] Shri. P.M.Bahulekar, the learned advocate for the plaintiffs submitted that there is registered agreement for sale with possession in favour of the plaintiffs. Entry in the Grampachayat is valid not cancelled till today. The plaintiffs have shown their prima facie possession over the suit property. He further submitted that even assuming that the plaintiffs are not entitled to the relief of specific performance, the plaintiffs are in possession of the suit property. Therefore, they cannot be evicted without following due process of law. The balance of convenience is in their favour. If the injunction is not granted it will amount to permitting the defendants to enter into land by taking law in hands. If the injunction is refused then the defendants may forcibly take possession of the suit property. Therefore, he prayed that the possession of the plaintiff should be protected by way of interim injunction.

9] In support of his contention he relied upon the judgments of Hon'ble Bombay High Court in :-

i) *Agostinho Da Costa And Anr. Vs. Antonio Santana Ferannides*

wherein it has been observed that *person in settled possession is entitled to file a suit for injunction restraining the defendants from interfering with his possession and in such a relief one a rightful owner can be prevented from using force and taking law in his own hands.*

ii) *In Marybai Marshal Pimenta Vs. Ramnath Gopal Bhuskute*, it has been observed that *it is well settled that at the time of considering whether an injunction should or should not be granted in favour of a party to protect his possession, all that the court has to do under order 39 rule 1 is to find out whether the party has prima facie established his possession in some capacity or other.*

10] On the contrary Shri D.R. Patil, the learned advocate for the

defendant submitted that, the plaintiffs have entered their name to the grampanchayat record by using political influence. Therefore, they have not come with the clean hands to this court and they are not entitled to discretionary relief.

11] In support of his contention he relied upon the judgment of Hon'ble Apex Court in :-

i) *Lourdu Mari David Vs. Louis Chinnaya Arogiaswamy reported in 1996 DGLS (SC) 1189* wherein it has been observed that *it is settled law that the specific performance being equitable relief, the party who seeks to avail jurisdiction of the court must come to the court with clean hands.*

ii) *Mohammed Ismail Gulam Shaikh Vs. Municipal Corporation of Greater Mumbai and another reported in 2016(3) Bom. C.R. 397* it has been held that *relief under order 39 rule 1 are equitable and discretionary and such discretion can be exercised only when person has come to court with clean hands.*

12] It is pertinent to note that the defendants in their written statement vide Exh.23 have specifically admitted that they have executed the said agreement but possession was never handed over to the plaintiffs. The said agreement is without consideration and not acted upon. The defendants have admitted the execution of the said agreement. The agreement for sale dated 25/04/2001 is registered instrument, therefore, has presumptive value. The recitals in the agreement shows that the defendants have received consideration of Rs. 3,40,000/- and handed over the possession of the suit property to the plaintiffs. Whether the defendants executed the agreement under the influence or not will be decided after the trial.

13] So far as entry in the assessment list (Exh.9) is concern, names of the defendants are shown as owner and names of the plaintiffs are shown as possessor. Application (Exh.28/3) shows that the plaintiffs sought to enter their names to the open land. But in the assessment extract (Exh.9) entry was made in respect of open land and a shade. The certificate dated 22.04.2013 shows that plaintiff No. 5 was the member and Village headman (Sarpanch) of Grampanchyat. The resolution No.3(185) dated 16/10/2009 (Exh. 28/5) shows that plaintiff No.5 has given affirmation to the resolution. The defendants have preferred appeal against the said entry and resolution.

14] In these circumstances I do not find that at this stage, the entry in assessment list is helpful to the plaintiffs. But assuming that there is no shed and the suit property is open land, the fact remains that possession was handed over to the plaintiffs by virtue of registered agreement of sale. In the said agreement specific boundaries of the suit property have been mentioned. The possession over the suit property, in the eyes of law, is possession of the plaintiff. Therefor, I am of the opinion that the plaintiffs have proved their prima facie possession over the suit property.

15] There is no dispute about the ratio given in the cited cases. I do not find any suppression of material facts by the plaintiffs, therefore the judgment cited by the defendants are not applicable to the case in hand.

16] So far as the claim for specific performance of the agreement is concern, the defendants have contended that the plaintiffs have filed this suit after 11 years from the date of execution of the agreement. During the course of arguments the learned counsel for the defendant sought to contend that the suit is not within limitation. Therefore, the plaintiffs have no prima facie case. But It is pertinent to note that preliminary issue regarding question of limitation was framed and evidence limited to that

extent was laid. After considering the evidence, my learned predecessor has already decided the question of limitation as preliminary issue and recorded finding that the suit is within limitation.

17] Further the learned advocate for the defendants argued that the suit filed by sisters of the defendant was dismissed in the year 2005. Deceased defendant No. 1 was never ill at the relevant time. He died due to drinking poison in 2014. Therefor, the plaintiffs could have filed the suit earlier. The plaintiffs have failed to show that they were and are ready and willing to perform their part of agreement. No doubt the plaintiffs have filed the suit after laps of considerable time after execution of the agreement. But the question, whether the plaintiffs were ready and willing to perform their part of the agreement or not can be decided only on the basis of detail evidence and after whole trial. In this regard I would to rely upon judgment of Hon'ble Bombay High Court in the case of **Baban Anantrao Naik** (*supra*), wherein it has been held that “ at the time of considering the application for interim relief of injunction, possession in only relevant matter. Whether the possession is legal or illegal can be decided in the trial. Whether the amount of consideration has been paid or not, whether the plaintiff was ready and willing to perform his part of contract or not, would be the issue which can be decided only after the parties adduce evidence. It would be premature at this stage to give findings on the said issues.”

18] To sum up, the execution of agreement is admitted. The recitals in the agreement shows that the plaintiff's have paid considerable amount and taken possession of the suit property. After the execution of agreement they have sent notice to the defendants in the year 2008 and 2013. At this stage all these facts shows that the plaintiffs have made out prima facie case to go for trial. At this stage it is not required to hold a mini trial or make out a case wherein the plaintiffs must succeed. In the

light of above discussion this court has come to the conclusion that prima facie case lies in favour of the plaintiffs. Accordingly, I answer point no.1 into affirmative.

As to point no. 2 and 3 :-

19] As I have already discussed above the plaintiffs have paid considerable amount and there in the possession of the suit property, balance of convenience lies in favour of the plaintiffs. If during in the pendency of this suit property is alienated then there would be possibility of multiplicity of proceeding and complexity therefore it would be proper to grant interim injunction in favour of the plaintiffs. On the contrary it would not cause hardship to the defendants if injunction is granted. Therefore, I record findings of this point into affirmative.

AS to point No. 4 :-

20] The plaintiffs have made out prima facie case in their favour. Therefor, I pass following order.

ORDER

1.The application (Exh.5) is allowed.

2. The defendants, their agents, servant and the persons claiming through them are hereby temporarily restrained from causing obstruction to the plaintiff's possession over the suit property i.e. H 0.8 R share in non-agricultural land No.1055 admeasuring H 0.63.43 R and potkharab 0.63R situated at mauze Waroonji, taluka Karad, bounded within the boundaries described in plaint para no. 1, till final disposal of this suit.

3. The defendants are hereby temporarily restrained from entering into any agreement with third party in respect of the suit property till final

disposal of the suit.

4.The Costs of the application shall be costs in cause.

Karad.
Date : 07-10-2016.

(A.J. Patil)
8th Jt. Civil Judge Jr. Div., Karad.