

ORDER BELOW EXH. 5 IN R.C.S. NO. 422/2022

This is an application filed under Order XXXIX Rule 1 and 2 and Section 151 of the Code of Civil Procedure (hereinafter referred to as C.P.C.) for granting an interim injunction restraining the defendant from obstructing peaceful possession of the plaintiff over the suit property and also restraining him from alienating or creating interest, charge, lease, gift or mortgage it.

2. It is contended that Block No. 183/2A/3, admeasuring 2 Aar, situated at Mouje Saidapur, Tal. Karad, District Satara, having Village Panchyat Property No. 2947 contains four rooms and RCC room along with a water closet (hereinafter referred to as suit property) is a subject matter of dispute.

3. The plaintiff is the aunt of the defendant. She purchased the suit property from her nephew Vilas Adhikrao Zimur on 04.07.2006. Since then she is in possession of the suit property. Even the revenue entries are standing in her name.

4. On 27.04.2015 the defendant approached the plaintiff and told her that he was in financial need and requested her to act as surety for availing loan. Accordingly, on 28.04.2015 the plaintiff remained present at the Sub Register Office and signed the relevant document.

The defendant had neither given a copy of the surety bond nor read over the contents of the bond to her.

5. Thereafter the plaintiff had decided for constructing a water closet in the suit property. Accordingly, on 01.03.2021 she assigned the construction work to Pradip Ramchandra Shevale by notarized agreement. The said work was completed. On 07.03.2022 the plaintiff knew the name of the defendant was entered into the 7/12 extract of the suit property by Mutation No. 20852. The name of the defendant was entered to the extent of 00.50 Aar out of the suit property. The plaintiff has never sold 00.50 Aar to the defendant. He cheated the plaintiff. The plaintiff has apprehension that the defendant might oust her from the suit property or he may sell it by taking advantage of revenue entries that are standing in his name. Hence prayed for restraining the defendant from obstructing peaceful possession of the plaintiff and to restraining creating charge or alienating the suit property.

6. On the other hand the defendant has filed his say (**Exh.20**) and contended that the application is false and frivolous. On 28.04.2015 the plaintiff for her family's needs sold 00.50 Aar out of the suit property for the consideration of Rs. 1,20,000/- to him. Therefore defendant has title to it. Accordingly, the possession of the property was handed over to the defendant. Even his name was entered in the revenue record. The plaintiff has not objected to those entries till today. The defendant had never cheated the plaintiff. The claim of the plaintiff

is barred by law of limitation. Also, the boundaries of the 00.50 Aar area out of the suit property are not intentionally mentioned. The injunction cannot be granted against the defendant being the owner of the 00.50 Aar out of the suit property. The plaintiff has no prima facie case in her favour. If the injunction is granted it will cause irreparable loss to the defendant. Contrary the plaintiff has 1.50 Aar area out of the suit property. Hence prayed for rejection of the application.

7. Heard learned advocate for the plaintiff and defendant.

8. The following points arise for determination. I record my findings thereon for reasons stated hereinafter.

P O I N T S

F I N D I N G S

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| 1. Whether the plaintiff has a prima facie case in her favour? | Partly Yes. |
| 2. Whether the balance of convenience is in favour of the plaintiff? | Yes. |
| 3. Whether plaintiff will suffer irreparable loss if the application is refused? | Yes. |
| 4. What order? | The application is partly allowed. |

REASONS**Admitted fact of the application -**

The relation between the parties.

Point No.1:

9. For the order of temporary injunction, the plaintiff must make out a prima facie case. The Court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it, there is probability that the plaintiff is entitled to relief. The suit is filed for claiming relief of declaration and perpetual injunction.

10. The defendant took defence regarding maintainability of the suit and the application. He contended that the alleged sale deed was executed in 2015 and the plaintiff has filed this suit in 2022. Hence the suit is barred by the law of limitation. The question of limitation is mix question of fact and law. Hence at this stage without any evidence it cannot be said that the suit is barred by law of limitation. It will be decide at the proper stage. Also he contended that an injunction cannot be granted against the true owner. However the validity of the alleged sale deed dated 28.04.2015 is in question and the plaintiff prayed for its deceleration as it is not binding on her. Therefore, prima facie at this juncture it cannot be said that sale deed has confirmed title of the defendant to the extent of 00.50 Aar out of the suit property. Hence at the stage the defendant cannot be called as true owner of 00.50 Aar out of the suit property.

11. The defendant further contended that, the plaintiff has mentioned incorrect boundaries of the 00.50 Aar out of the suit property. Therefore this property is not identifiable. However the defendant only took a vague defence. If the boundaries are incorrect then what are its correct boundaries are not mentioned by him. Therefore this defence could not hold the ground.

12. Perused application, say and documents. The plaintiff has filed a 7/12 extract (**Exh.8**) of the suit property which shows her name to the extent of 1.50 Aar and the name of the defendant to 0.50 Aar. 8A Extract of Village Panchayat Milkat No. 2947 (**Exh.9**) shows the name of the plaintiff as an owner of four rooms and two RCC rooms along with a water closet. The plaintiff has filed a certified copy of the alleged sale deed (**Exh.3/2**) dated 28.04.2015 which shows the plaintiff has sold 0.50 Aar out of the suit property to the defendant for the consideration of Rs. 5,000/-.

13. The main dispute in this case is about the alleged sale deed. It was executed in 2015 and the name of the defendant was entered in 2021. The defendant claims he is in possession of the suit property since the execution of the sale deed. However, the plaintiff has filed a notarized agreement (**Exh.3/3**) dated 01.03.2021 which shows that by said agreement the construction work over the suit property was assigned to Pradip Ramchandra Shelake. If the possession was handed over to the defendant on the same day in the view of execution of the sale deed then how did the plaintiff construct the suit property after the

alleged sale deed? Why didn't the defendant object to that construction ? No justification was put forth by the defendant on this aspect.

14. As far as possession over the suit property is concerned the plaintiff contented that she is in possession of the suit property. On the other hand the defendant submitted that he is in possession of 00.50 Aar out of the suit property. He further submitted that he is in possession of the property since the inception of the alleged sale deed. He has filed tax receipts and 8A extract (**Exh.23/3 and 23/4**) which shows that he had paid tax of Property No. 3949. 8A extract shows property no. 3949 standing in name of the defendant. Wherein there is 10 x 10 shed. It is settled law that the revenue entries as well as tax receipts are not cogent evidence of the possession. They are meant for the purpose of collection of the revenue. Hence, these receipts and extract are not prima facie proof of the possession. On the contrary, the notarized agreement (**Exh.3/3**) prima facie shows that the possession of the suit property is with the plaintiff even after the execution of alleged sale deed. Hence, prima facie it is established that the possession of the suit property is with the plaintiff.

15. Now the apprehension of the plaintiff regarding alienation of the suit property at the hands of the defendant is concerned **Section 52 of the Transfer of Property Act, 1882** is considered as adequate protection for the alienation of the property which is pending in question. However, it cannot curtail or take away powers of the Court from granting the interim injunction in the appropriate cases. In present case, the revenue entries are standing in the name of the defendant to

the extent of the 00.50 Aar out of the suit property. Hence, the possibility of the alienation by him by taking advantage of that entry cannot be ruled out.

16. As far as obstruction to the possession of the plaintiff by the defendant is concerned, the plaintiff has not adduced any prima facie evidence which will substantiate her claim regarding obstruction. Hence, in the absence of the prima facie evidence the Court is not inclined to hold that there is obstruction to the peaceful possession of the plaintiff over the suit property by the defendant.

17. The plaintiff has prima facie established her case to the extent of the apprehension of alienation of 00.50 Aar out of the suit property by the defendant. However, she has not established obstruction to her possession by the defendant. Hence, answer to point no. 1 is partly affirmative.

Points Nos. 2 and 3:

18. The plaintiff has made out party prima-facie case in his favour. If the injunction is not granted and in consequence, the suit property is alienated then it will cause greater hardship to the plaintiff than the defendant as it will cause multiplicity of the proceedings. Therefore, the balance of convenience and irreparable loss are in favor of the plaintiff. Hence, the answer to points nos. 2 and 3 is affirmative.

Point No.4:

19. Considering the above discussion, the application is partly allowed. Hence, I pass the following order.

ORDER

1. The application is partly allowed.
2. Defendant or any person on his behalf or through him is temporarily restrained from alienating 00.50 Aar out of the suit property which is standing in his name till final disposal of the suit.
3. Costs in main cause.

Sd/-xx

Date: 02.01.2024

(P. G. Shelar)

Place: Karad

6th Jt. C.J.J.D., Karad.