

MHST130005532020



**Order below Exh.5 in R.C.S.No. 57/2020**

CNR No.MHST13-000553-2020

1. This is an application under Order 39 Rule 1 & 2 r/w. Sec 151 of the C.P.C. for interim temporary injunction directing to restrain the defendants from disturbing peaceful possession of plaintiff over suit property by defendants.
2. Plaintiff has filed present suit against defendants for declaration, injunction and recovery. In the present suit plaintiff has presented interim application against the defendant no. 1 to 3 and 5 restraining defendants from causing disturbance to the possession of plaintiff over the suit property.
3. Plaintiff in the application has contended that, suit property 4A was ancestral property of defendant no. 1 to 6. Defendant no. 1 to 6 conveyed gift deed dated 28/08/2008 in favour of plaintiff no. 1. As per conveyance of gift deed plaintiff is in lawful possession and ownership of suit property 4A. Plaintiff constructed R.C.C. building in the suit property, in the year 2008-09. Plaintiff no. 1 is the educational institution, plaintiff created secondary education for the students of hilly region from 5<sup>th</sup> to 10<sup>th</sup> standard.

4. Plaintiff further contended that, Vijay Laxman Patil son of defendant no. 1 delivered letter dated 16/08/2019 in concern that, Vijay Laxman Patil be appointed as permanent teacher in plaintiff's education institution. Otherwise, on failure of plaintiff to appoint, he will struck lock to the school on 26/08/2019. On 31/08/2019 Laxman Balu Patil and another 5 illegally entered in the suit property and locked the school i.e. suit property 4A. Plaintiff filed complaint to the Dhebewadi Police Station about this incident and on police intervention defendant re-open the lock. Plaintiff further contended that, incident occurred on 31/08/2019 was repeated by the defendants on 09/09/2019.

5. Defendant no. 1 and his son Laxman Balu Patil caused obstruction to the teaching, non teaching staff as well as students from entrance and enjoyment of educational activities in the suit property 4A and 4B. Therefore, apprehension of obstruction and disturbance from enjoyment of suit property is created in the mind of plaintiff as per continuous illegal act carried on the suit property at the hands of defendants.

6. Hence, the plaintiff has filed this application for temporary injunction against the defendant restraining not to disturb peaceful possession of plaintiff over suit property. If the injunction is not granted in favour of the plaintiff, then plaintiff will suffer an irreparable loss and injury. Thus, plaintiff has prima facie case, balance of convenience also lies in favour of the plaintiff. Therefore, the plaintiff prayed to grant this application.

7. Defendant no. 1, 2, 3 and 5 appeared and filed their written statement and say to the present application vide Exh. 16. Defendants denied claim of plaintiff in to-to and prayed for rejection of interim application. Defendants in their say as well as written statement contended that, suit property is joint family property and ancestral property of their forefathers. Defendants further contended that, as the suit property is admittedly ancestral property of defendants, defendants are co-parcener in the suit property. Forefathers of the defendants have conveyed illegal gift deed in favour of plaintiff without obtaining consent of co-parceners. Hence, defendant contended that, possession conveyed as per gift deed is illegal and prayed for restoring illegal possession in favour of defendants as per claim raised in counter. Defendant contended that, plaintiff's institution agreed in Gramsabha in the year 2007 to appoint son of defendant no. 1 as permanent lecturer in plaintiff's institution. Therefore, defendants agreed to convey the gift deed in favour of plaintiff, on assurance of permanent appointment of Vijay Laxman Patil as lecturer in the institution. Moreover, defendant no. 1 transferred amount of Rs. 1,25,000/- in favour of plaintiff institution incurred from Suzolon Company as compensation amount. Defendant no. 1 transferred said amount of Rs. 1,25,000/- on the verdict of plaintiff to appoint his son as lecturer in the suit property. Defendant further contended that, Vijay Laxman Patil was appointed as lecturer since April 2013 till November 2013 in plaintiff's institution at Kukudwad, Tal. Maan on C.H.B. (clock hours basis). Vijay Laxman Patil was qualified as M.A.B.Ed. and

he was qualified to be lecturer. Defendant denied the allegations made by plaintiff causing obstruction in the suit property and disturbing the educational work carried by plaintiff in the suit property. Defendants contended that, suit of plaintiff is bad for mis-joinder of parties as allegations are not raised against defendant no. 2 to 6. Hence, defendant no. 2 to 6 are illegally involved in the present suit. Hence, defendants prayed for rejection of application.

8. Perused the plaint, application and say filed on it by defendants. Perused the documents filed on record by both sides. Heard learned Advocates for both sides through Video-Conference. From perusal of record following points arise for my determination. I have recorded my findings against each of them for the reasons mentioned as under:-

No	Points	Findings
1	Whether plaintiff has prima-facie case ?	Yes.
2	Whether balance of convenience lies in favour of plaintiff ?	Yes.
3	Whether plaintiff will suffer irreparable loss if the relief of injunction is not granted, as sought?	Yes.
4	What order ?	Application is partly allowed.

**REASONS**

9. Plaintiff to prove his case relied upon following documents :-

- 1] Exh. 3/1 Registration certificate of Rayat Shikshan Sanstha.
- 2] Exh. 3/2 Letter of recognition.
- 3] Exh. 3/3 Registered Gift Deed dated 28/08/2008.
- 4] Exh. 3/4, 7/12 extract of new Gat no. 715.
- 5] Exh. 3/5 mutation entry no. 448
- 6] Exh. 3/6, police complaint made by plaintiff dated 16/06/2020.
- 7] Exh. 3/7, plaintiff has also written complaint given to Tahasildar, Patan dated 29/06/2020
- 8] Exh. 9/1, 8A extract (assessment) of suit property
- 9] Exh. 9/2, Letter of educational officer, Satara dated 06/06/2020 in concern with re-opening of school.
- 10] Exh. 9/3, Circular issued by Government of Maharashtra in concern with commencement of online schools.

- 11] Exh. 21/1, 7/12 extract of suit property Gat no. 818.
- 12] Exh. 21/2, 8A extract of suit property.
- 13] Exh. 24, affidavit of plaintiff witness Ramchandra Dhnyaneshwar Gaikwad.
- 14] Exh. 25, affidavit of plaintiff witness Tukaram Ravaji Ombale.
- 15] Exh. 26, affidavit of plaintiff witness Dr. Vitthal Subrao Shivankar.

10. Defendants to prove their case relied upon following documents :-

- 1] Exh. 18/1, Letter delivered to plaintiff from principal New English School, Jinti dated 16/07/2011.
- 2] Exh. 18/2, Letter delivered to plaintiff from Sarpanch Jinti dated 16/07/2011.
- 3] Exh. 18/3, Letter delivered to Laxman Balu Patil from principal New English School, Jinti dated 24/09/2011.
- 4] Exh. 18/4, Letter delivered to plaintiff no. 1 from principal New English School, Jinti.
- 5] Exh. 18/5, Letter delivered to plaintiff no. 1 from Sarpanch Grampanchayat Jinti, dated 16/07/2011.

- 6] Exh. 18/6, Resolution passed by Grampanchayat Jinti dated 16/08/2019.
- 7] Exh. 18/7, Resolution passed by school committee Jinti addressing plaintiff no. 1 dated 15/08/2014.
- 8] Exh. 18/8, Resolution passed by Grampanchayat Jinti dated 15/08/2014.
- 9] Exh. 18/9, Letter delivered to plaintiff no. 1 from principal New English School, Jinti.
- 10] Exh. 18/10, Letter delivered to plaintiff no. 1 from M.L.A. Narendra Patil dated 17/04/2017.
- 11] Exh. 18/11, Personal information of Vijay Laxman Salunkhe.
- 12] Exh. 18/12, Project affected certificate issued in name of Laxman Balu Patil (Salunkhe) dated 20/04/2004.

### **11. Admitted Facts :-**

- I) Secondary School from 5<sup>th</sup> to 10<sup>th</sup> standard in name of Daidipya Vijay Kambale Vidyalay, Jinti Tal. Patan of plaintiff no. 1 institution situated in suit property 4A is admitted.
- II) Registered gift deed dated 28/08/2008 conveyed in favour of plaintiff no. 1 from defendant no. 1 to 6 is admitted.

- III) Revenue entries in name of plaintiff no. 1 to suit property 4A is admitted.
- IV) Suit property 4A was ancestral property of defendant no. 1 to 6 is admitted.

**As to point no. 1 :-**

12. The prima facie case requires to be established by the parties at the time of claiming temporary injunction. Prima facie case means that evidence brought on record which would reasonably allow the conclusion that the plaintiff seeks. A case which can be said to be established if the evidence which is led in support of the same were believe. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and as to whether that was the only conclusion which could be arrived at on that evidence. Prima facie plaintiff has showed his possession over the suit property.

13. Possession of plaintiff over the suit property 4A is admitted by defendants. Moreover, construction made over suit property after conveyance of registered gift deed in favour of plaintiff no. 1 for secondary school is admitted. Prima facie pleading of the plaint and documents on the record i.e. registered gift deed in favour of plaintiff conveys possession of suit property 4A in favour of plaintiff since 2008. Moreover, defendants in their counter claim has prayed restoring illegal possession of the suit property transferred in favour of plaintiff. Therefore, possession of plaintiff over suit property is admitted. On the

contrary, defendants has contended that, possession of the plaintiff over suit property is illegal and therefore on the basis of illegal possession plaintiff is not entitled for relief of equity. Therefore, prayed for rejection of the application.

14. Defendants while challenging legality of possession has pleaded that, plaintiff institution assured defendant no. 1 to appoint his son Laxman as permanent lecturer in plaintiff's institution. Therefore, on assurance of plaintiff institution defendant agreed to convey gift deed in favour of plaintiff. Moreover, defendant no. 1 transferred sum amount of Rs. 1,25,000/- in favour of plaintiff no. 1 for the purpose of permanent appointment. On failure of assurance given by plaintiff the terms and recitals agreed in gift deed are void-ab-initio. And hence, gift deed conveyed in favour of plaintiff is void without consideration of assurance given to the defendant no. 1. While challenging recitals and gift deed and assurance given to the defendant no. 1. To substantiate their claim defendants relied on the documents produced along with list Exh. 18. Documents relied by the defendants are resolutions passed by Grampanchayat Jinti, resolutions passed by school committee and correspondence through letters made to plaintiff. Defendant has failed to produce on record documentary proof in concern with assurance of permanent appointment in favour of Vijay Laxman Patil (Salunkhe). Mere documents of resolution made by Grampanchayat in correspondence does not convey liability of plaintiff, in regard with permanent authority. While deciding the

suit on merits legality of gift deed and oral assurance can be proved or disproved by either parties. At this juncture, the oral assurance without documentary proof cannot substantiate or override the registered documents and mutation entries carried in the name of plaintiff.

15. Defendant has relied on case cited by Hon'ble High Court Bombay in *Parvatibai Annaji Patil Vs. Baburao Kanade 2014(6) All MR 845*, a gift made by co-parcener of his undivided interest in the co-parcenary property, in absence of consent of other co-parceners gift becomes void. With due respect to the above cited case, consideration of interest in suit property of co-parceners has to be considered on final merits of case. Thereafter, legality of gift deed has to be considered. In our case, prima facie consideration on basis of title is prevailing from execution of gift deed till today. Therefore, ratio laid down in cited case is not applicable to plaintiff at this juncture.

Secondly, defendant has relied on cited case of Hon'ble High Court Bombay in *Mohd. Ismail Shaikh Vs. Municipal Corporation Mumbai 2016(2) All MR 381*, equitable and discretionary relief of injunction cannot be granted to the person who suppress material facts. With due respect to the ratio laid down by Hon'ble High Court, the facts of cited case are not applicable to present case. To prove suppression of material fact defendant has not produced prima facie evidence to support their contentions.

16. Whether possession over suit property of plaintiff is legal or illegal has to be considered on final merits of the case. Therefore, at this juncture, documents on record has to be considered while deciding prima facie case i.e. possession over the suit property. Recitals of registered gift deed, 7/12 extract of the suit property as well as mutation entry no. 448 in the name of plaintiff conveys possession of plaintiff over the suit property. It is undisputed fact that, mutation entries conveyed in favour of plaintiff are not challenge by defendants since 2008. Therefore, mere challenging possession of plaintiff as illegal, does not substantiate claim of defendants over the suit property. Therefore, prima facie possession of plaintiff over the suit property 4A is in favour of plaintiff. Hence, I answer point no. 1 in affirmative.

**As to point no. 2 and 3 :-**

17. Plaintiff to show cause of obstruction and disturbance over the suit property. He has produced on record written complaint given to the police station dated 16/06/2020 which is produced at Exh. 3 sr. no. 6. Further plaintiff has also produced on record written complaint given to Tahasildar, Patan dated 29/06/2020 which is produced at Exh. 3 sr. no. 7. Averments of both the applications makes clear obstruction and apprehension caused from the defendants to the plaintiff for enjoyment of this peaceful possession over the suit property. Defendant no. 6 is abated as per pursis given by the plaintiff while plaintiff has waived relief against defendant no. 4 vide pursis. Allegations made by plaintiffs are only against defendant no. 1 and his son

Laxman and other persons on their behalf. Plaintiff has failed to plead allegations or obstructions made by defendant no. 2, 3, 4 and 5 over the suit property. Hence, it would not be proper to pass interim injunction order against defendant no. 2, 3, 4 and 5.

18. Thus plaintiffs are prima facie in possession of the suit property since execution of the gift deed. Balance of convenience lies in favour of plaintiffs because mischief is likely to be caused to the plaintiffs if injunction is not granted as they are prima facie in possession of suit property. The irreparable injury also likely to be caused to the plaintiffs if temporary injunction is not granted to them. In the light of conspectus of above discussion I answer point no. 2 and 3 in affirmative.

**Point no.4**

19. In view of the reasons and findings given to point nos. 1 to 3, I am of considered opinion that the application deserves to be allowed against defendant no. 1. Accordingly, I proceed to pass the following order.

**ORDER**

- 1] The application is partly allowed.
- 2] Defendant no. 1, his agents, servants or any other person in his behalf are temporarily restrained from causing obstruction to the possession of the plaintiffs over the suit property till final disposal of the suit.

3] Costs in cause.

**Patan**  
**Dt. 07/10/2020**

**(N.A.Randive)**  
**Jt. Civil Judge, Jr. Dn., Patan.**