

ORDER BELOW EXH.313 IN R.C.S. NO.167/2005

Plaintiffs have filed present application for seeking relief of injunction against defendant nos.6 to 12 and nos.17 and 18, as not to alienate suit properties and create third party interest.

02. It is contended by plaintiffs that, they have filed present suit for declaration and mandatory injunction. Defendant nos.6 to 12 and 18 have executed sale-deed of one of suit properties on 25.01.2019. Accordingly, plaintiffs have amended the suit. Now, defendants are trying to alienate the suit property further and trying to create third party interest in it. Therefore, plaintiffs requested to defendants for not to alienate the suit property, but defendants did not pay any heed to them. If defendants succeeded to alienate the suit property, then it will create complications in present suit. For all these reasons, they prayed to allow the application.

03. Defendant nos.6 to 9, 11, 12, 17, 18 have filed their say at Exh.322 and 323. They have averred that all allegations made by plaintiffs are false. It is contended by defendants that, defendant nos.17 and 18 have purchased alleged portion of the suit properties prior to this suit. The said fact was well within knowledge of plaintiffs, while filing of this suit. Because names of defendants nos.17 and 18 are already recorded in 7/12 extract of suit properties. They also contended that, plaintiffs have admitted that defendants are in possession in suit properties. Defendants have denied the title and possession of plaintiffs over suit properties. Defendants also raised defence that, as per section 41(h) of the Specific Relief Act, present application is not maintainable. Hence, they prayed for rejection of the application with costs. Defendant no.10 failed to file his say.

04. After considering contents of application and say, following points arise for my determination.

Sr. No.	Points	Findings
1	Do plaintiffs prove prima facie case ?	In negative
2	Do plaintiffs prove that balance of convenience lies in their favour ?	In negative
3	Whether plaintiffs will suffer irreparable loss in rejection of application ?	In negative
4	What order ?	Application is rejected.

ADMITTED FACTS

05. The sale-deeds executed by defendant no.6 to 12 in favour of defendant nos.17 and 18 are not in dispute. The possession of defendants is also admitted. All facts about previous R.C.S.NO.253/1986 and its appeal No.420/1998 in respect of suit properties are also admitted by both parties.

REASONING

AS TO POINT NOS. 1 TO 3 :-

06. All points are interlinked with each other. Hence, to avoid repetition those are discussed together.

07. Plaintiffs have come with case of declaration and mandatory injunction. The learned Advocate of plaintiffs argued that,

the predecessor in title of defendant nos.6 to 12 have no right title interest in suit properties. The trial court has denied the rights of the predecessor in title of defendant nos.6 to 12 in R.C.S.No.253/1986. Therefore, sale-deeds executed by defendant nos.6 to 12 are sham and bogus. During pendency of the suit, defendant nos.6 to 12 have executed sale-deed in favour of defendant no.17 to 18. Now, defendants no.17 and 18 are about to alienate the suit property. Therefore, in order to avoid further complications, plaintiffs prayed for allowing the application.

08. In retort the learned Advocate for defendants argued that, as per mutation entry no.398, the right of defendant no.1(since deceased) in suit properties was finally decided by Hon'ble Bombay High Court in Special Civil Application No.2397/1970. Further defendant no.1 and defendant nos.6 to 12 have compromised in Civil Appeal No.420/1998. Accordingly, defendant nos.6 to 12 became owner and possessor of suit properties. Defendant nos.6 to 12 have executed sale-deeds in respect of suit properties in favour of defendant nos.2 to 5 and 17 and 18. All these facts are recorded in Revenue records of suit properties. All these Revenue entries were never challenged by plaintiffs till today. He also argued about the limitation and maintainability of present application. He strongly contended that, the possession of defendants is admitted by plaintiffs and therefore plaintiffs are not entitled any relief of injunction.

09. Plaintiffs in support of their case relied on 7/12 extracts of suit properties at Exh.316/1 to 8, mutation extracts nos.12816, 12378 at Exh.316/9 and 10.

10. Defendant nos.6 to 9, 11 and 12 have filed mutation extract No.6839, 6840, 10679, 6322 at Exh.327 to 329, 326/3 respectively, copies of sale-deeds at Exh.326/5 and 7 and Exchange deed at Exh.326/6.

11. Defendant nos.17 and 18 have filed the order passed in Special Civil Application No.2397/1970 at Exh.331/1, copies of sale-deeds at Exh.331/2 and 3, mutation extracts No.6787, 3824, 8007, 10875, 6936, 6765 at Exh.332 to 336 and 349 respectively, 7/12 extracts at Exh.337 to 342, Khate extracts at Exh.343 and 344, certified copies of civil suits at Exh.345, 346, certified copy of compromise pursis filed in civil appeal at Exh.347 and certified copy of Civil Appeal No.348.

12. Admittedly, plaintiffs have come with case of declaration and mandatory injunction. Plaintiffs contended that defendant nos 6 to 12, 17 and 18 are about to alienate suit properties and therefore they filed present application for injunction against them. In such backdrop its important on the part of plaintiffs to show that they have prima facie title in the suit properties. As discussed supra plaintiffs have admitted fact of possession in suit properties lying with defendants and sale deeds in respect of suit properties. On perusal of Special Civil application No.2397/1970, Civil Appeal 420/1998 and 7/12 extracts of suit properties it appears prima facie that defendant nos.6 to 9, 11, 12, 17 and 18 have possession of suit properties as owner. Not a single contrary document produced by plaintiffs which will show their title in the suit properties.

13. According to plaintiffs the Civil Court has denied rights

of predecessor in title of defendant nos.6 to 12 in R.C.S. No.253/1986. For the sake of argument if it is presumed so, then also said suit is further compromised in Civil Appeal 420/1998. It is not the case of plaintiffs that they are challenging the said compromise. Therefore at this stage defendants have established prima facie better title than that of plaintiffs. Hence I am not inclined to grant the application.

14. Plaintiffs filed this suit in 2005 ie. before 14 years. Defendant nos.6 to 12 are in possession of suit properties prior to that ie. since 1998. Defendant nos.17 and 18 purchased some portion of suit properties in year 2004. If all these facts considered together then for supra discussion defendants being owner and possessor of suit properties are at liberty to enjoy their properties. For this reason also the application is liable to reject. Further more, interim relief under Indian Law can only be granted if it is in aid of an ancillary to main relief that may be available to a party on final determination of rights in suit which must be best on a cause of action. Interim relief claimed itself must be a part of substantive relief to which plaintiff's cause of action entitled him. In case at hand, the present prayer of interim relief is nowhere part of substantive relief of the suit. Therefore, also present application is not tenable.

15. Moreover, it can not be overlooked that plaintiffs have amended present suit for 11 times. Since framing of issues ie.10.01.2012, plaintiffs kept delaying the suit for this or that reasons. For this conduct also, at this stage, plaintiffs are not entitled for any relief of equity. But certainly defendants are entitled for compensation for the conduct of plaintiffs which I assess as Rs.5000 for this application.

AS TO POINT NO.4 :

16. To sum up, plaintiffs failed to show prima facie case lies in their favour. The balance of convenience does not tilt in their favour. If injunction as prayed by plaintiffs not granted no harm or injustice will be caused to plaintiffs or they will not suffer an irreparable loss which cannot be compensated in terms of money. Therefore, the application is liable to be rejected with costs. In answer to point no.4, I pass the following order.

ORDER

- 1) Application stands rejected.
- 2) Plaintiffs are directed to pay costs of Rs.5000/- to defendant nos.6 to 9, 11, 12, 17 and 18.

Phaltan
Date :-15-04-2019

(**S. M. Bohara,**)
Jt. Civil Judge J. D. Phaltan.