

ORDER BELOW EXH.5 IN R. C. S. No.185/2018

CNR: MHST14-004157-2018

This is suit for permanent Injunction and declaration along with an application for an interim injunction under order 39 rule 1 and 2 of the Code of Civil Procedure, 1908 to restrain defendant from alienating suit land and creating third party interest therein.

2. Description of suit property:-

Agricultural land bearing Gat No. 407 admeasuring 0.78R situated at Village- Rawadi Budruk, Tal. Phaltan, Dist. Satara. Suit property also includes reconveyance deed dt. 23/12/2009 executed between plaintiff and defendant.

Suit land is bounded as below-

On East- Land of Kashinath Sahebrao Bobade

On South- Land of Kantilal Laxman Bobade

On West- Temple of God Pandurang

On North- Land of Hanmant Ganpat Bobade

(Hereinafter referred as "suit Property".)

3. The Pith and Substance of plaintiff's case is :-

Plaintiff is resident of Village Rawadi, Budruk, Tal. Phaltan. Plaintiff is owner of suit property. She is in possession of it. Defendant is her relative. It is the case of plaintiff that, she is in need of money to solve the family problems. Defendant is ready to give

money on a condition of mortgaging suit land to her. It was agreed between plaintiff and defendant that, after repayment of money, suit land will be returned to plaintiff. Similarly, that time, it was agreed that, plaintiff will repurchase that suit land from defendant for the consideration amount of Rs. 2,44,000/-. The said reconveyance deed was executed between plaintiff and defendant on 23.12.2009 on the stamp of Rs. 100/- bearing No. 5771/2009. Plaintiff further pleaded that, though reconveyance deed was made, she is in possession of suit land. On 28.12.2017, 27.6.2018 plaintiff sent notices by R.P.A.D to defendant and showed her willingness to repurchase the suit land. In spite of receiving notice, defendant did not execute reconveyance deed in favour of plaintiff with respect to suit land. Plaintiff further pleaded that, defendant is trying to sell the suit land by taking advantage of entry of his name on 7/12 extract of suit land. If, defendant sell the suit land, right and interest of plaintiff into suit land will vitiate. Irreparable loss will be caused to plaintiff. Hence the application.

4. Defendant has appeared in the suit and filed his say at Exh. 16. He contested the application on the ground that, grounds in the application are false and imaginary. He has denied the material case of the plaintiff, in respect of reconveyance deed dt.23.12.2009. He contended that, suit is not within limitation. He admitted the description of suit property. He further contended that plaintiff is his relatives. Plaintiff and her husband namely Yuvraj Laxman Bobade are in need of money. They insisted the defendant to purchase land. Hence, on 24.7.2008, defendant purchased area of 21 R out of Gat

No. 403 situated at village Rawadi Budruk which is in the name of Yuvraj Bobade and executed conditional sale deed for the consideration amount of Rs. 50,000/-. Similarly, defendant has executed another conditional sale deed for period of 5 years with respect to Area 30 R out of 0.78 R area of Gat No. 407 which is in the name of plaintiff for consideration amount of Rs. 40,000/- on 7.11.2008, as plaintiff and her husband were again in need of money. After that, plaintiff insisted the defendant to purchase the suit land. It was agreed between parties that, out of suit land, reconveyance deed of an area of 30R is to be executed firstly. Accordingly, reconveyance deed with respect to 30R is executed on 23.12.2009 and on the same day, Defendant purchased suit land for the consideration amount of Rs. 1,80,000/- and executed registered sale deed since then defendant is in possession of suit land. Name of defendant is entered on 7/12 extract by Mutation Entry No. 1223. Plaintiff has filed RTS Revision 106/2013 against entries of defendant on 7/12 extract before SDPO, Phaltan. It was dismissed. Hence, he prayed to reject the application.

5. Heard both sides. On rival contentions raised by both parties on documentary evidence produced on record. Following points arise for my determination and I have recorded my findings thereon alongwith reasons are as follows:-

Sr. No.	POINTS	FINDINGS
1	Whether plaintiff has made out prima-facie case?	Yes.

2.	Whether the balance of convenience lies in her favour ?	Yes.
3.	Whether plaintiff will suffer re-reparable loss, if the order of injunction is not granted in her favour?	Yes.
4.	What Order?	The application is allowed.

REASONS

6. Ld. Advocates for plaintiff Shri. I. C. Khan has relied on certified copy of 7/12 extract of Gat No. 407 situated at village Rawadi Budruk at Exh.7, certified copy of Sale deed dt 22.12.2009, Photocopy of reconveyance deed dt. 22.12.2009, office copy of notice sent to defendant dt. 18.6.2018, photocopy of acknowledgement receipts vide list at Exh. 3.

7. Ld. Advocate for defendant Shri. R. A. Zore has relied on photocopy of registered conditional sale deeds dt. 24.7.2008 and 7.11.2008, original copy of notice sent by plaintiff to defendant dt. 13.1.2012 vide list at Exh. 1.

8. It is not in dispute that-

a) Description of suit property.

b) Plaintiff and defendant are relatives of each other.

AS TO POINT NOS 1 TO 3:-

9. All points are interlinked. Hence, I am discussing them

altogether.

10. It is not in dispute that, plaintiff and defendant are relatives of each other. Also, description of suit property is not in dispute. It is the case of plaintiff that, she was in need of money. She asked for financial help to defendant. Defendant agreed to pay money on a condition of keeping suit property on pledge. Similarly, plaintiff pleaded that, it was agreed between parties that, defendant will execute reconveyance deed with respect to suit land after receiving amount of Rs. 2,44,000/-. Accordingly reconveyance deed is executed. In support of contention, plaintiff has filed certified copy of registered sale deed dt. 22.12.2009 along with list at Exh. 3. I have gone through copy to sale deed. It prima facie appears that sale deed with respect of suit land was executed between plaintiff and defendant for the consideration amount of Rs. 1,80,000/-. At the time of execution of sale deed, possession of suit land is given to defendant. Also plaintiff has filed photocopy of reconveyance deed dt. 22.12.2009 with list at exh. 3. Upon perusal of it's recital, it appears that, defendant is bound to return suit land to plaintiff upon receiving payment of Rs. 2,44,000/-. It bears signature of both plaintiff and defendant. In support, plaintiff has filed an affidavit of witness to reconveyance deed dt. 22.12.2009 namely Hanmant Bobade. Similarly, plaintiff has filed certified copy of 7/12 extract of Gat No. 407 with list at Exh. 3. I have gone through it. It appears that, name of plaintiff and defendant have been entered upon 7/12 extract. Therefore, prima-facie, it appears that, plaintiff has some right and interest into the suit land.

11. On the other hand, defendant has filed photocopies of conditional sale deeds dt. 24.7.2008, 7.11.2008, with list at Exh. 19. I have gone through, photocopy of registered conditional sale deed dt. 24.7.2008. It was executed between husband of plaintiff namely Yuvraj Laxman Bobade and defendant with respect to Gat No. 403. The period for conditional sale deed is 10 years for the consideration amount of Rs. 50,000/-. Gat No. 403 is not suit land. Also, I have gone through conditional sale deed dt. 7.11.2008. It appears that, it is executed between plaintiff and defendant for the period of 5 years for the consideration amount of Rs. 40,000/-. The said conditional sale deed is with respect to Gat No. 407 which is suit land.

12. Though, it is matter of record that, conditional sale deed was executed between plaintiff and defendant on 7.11.2008 with respect to Gat No. 407, it also came on record through reconveyance deed dt. 22.12.2009 that, it was agreed between parties that, defendant has to return suit land upon receiving Rs.2,44,000/- from plaintiff. Therefore, 7/12 extract of Gat No. 407, reconveyance deed dt. 22.12.2009 shows that, plaintiff possess some right and interest into the suit land. Therefore, it is duty of court to protect the right and interest of plaintiff existing into suit land. Therefore, prima-facie, case is existing in favour of plaintiff.

13. It is matter of record that, defendant is in possession of suit land. The registered sale deed dt. 22.12.2009 executed between plaintiff and defendant clears the position.

14. Defendant took defence that, suit is not within limitation. So far as plea of limitation is concerned, it is matter of evidence.

15. So far as the ingredients of balance of convenience and irreparable loss is concerned, it can not be said that, defendant can dispose of the suit land at his own, because suit land is not exclusively in his name. However, he may create third party interest by taking advantage of the fact that, his name is on record of the agricultural land. Name of plaintiff is also entered on the record. In that case, it will develop complications and will cause multiplicity of suit proceeding. The possibility of creating third party interest can not be ruled out in view of fact that there is no specific denial on the part of defendant in his say and written statement that himself is not going to create third party interest in the suit land. No Ir-reparable loss will cause to defendant in case of grant of temporary injunction. The balance of convenience lies in favour of the plaintiff. Therefore point No. 1 to 3 are answered in the affirmative.

AS TO POINT NO. 4:-

16. The plaintiff has succeeded to establish golden rules, i.e. prima-facie case, balance of convenience and Ir-reparable loss which are required for issuance of temporary injunction against defendant. Therefore, the application is deserves to be allowed. Cost of the application shall follow the event. Hence, in answer to point No. 4, I pass the following order.

ORDER

- 1) The application (Exh. 5) is allowed.
- 2) The defendant or his agent hereby temporarily restrained from alienating the suit land and creating third party interest therein till final decision of suit.
- 3) Costs in cause.

Phaltan

Date : 21.09.2019

(K. K. Patil,)

**2nd Jt. Civil Judge Junior Division,
Phaltan.**