

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION, VADUJ

Special Civil Suit No. 62/2019

CNR No.MHST180006812019

Bhimashankar Govind Ligade

Vs

Shivkanya Charudatta Sakhare and Ors.

ORDER BELOW APPLICATION AT EXH. 5

(Passed on this day of **26th February, 2021**)

This is an application filed by the plaintiff under Order XXXIX Rule 1 of the Civil Procedure Code seeking relief of temporary injunction against defendants restraining them from causing any sort of obstruction to the possession of plaintiffs in a property bearing City Survey No.803, area 1203 Sq.Meter out of which 200.50 Sq.Meter of which property No.2798, 15x10=150 Sq.feet tin shed (hereinafter referred as '**suit property**').

2. Shortly stated plaintiff's case is that Gat No.1146, Survey No.266, City Survey No.487, 1493 and 1485 are inherited by plaintiffs wife and defendant No.2 from their mother. Husband of defendant No.2 namely Dhondiram Muke is suffering from Cancer and he requires huge amount for his medical treatment. So, defendant No.2 decided to sell out these properties. Accordingly, plaintiff purchased

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suit properties for consideration amount of Rs.10,000,00/-. On 10/10/2013 on 23/10/2013 and on 03/03/2014 the plaintiff paid Rs.1,50,000/-, 50,000/- and 7,00,000/- respectively. Thereafter, he also paid Rs.1,00,000/- to defendant No.2.

3. Plaintiff's further contention is that on 07/03/2014 defendant No.2 and the plaintiff had been to the Sub-Registrar office to execute sale deed with respect to C.S.No.803, 1487, 1493 and 1485. But to the City Survey record name of mother of defendant No.2 was in existence. So, instead of execution of sale deed defendant No.2 executed notarized power of attorney in favour of plaintiff. Thereafter, she executed sale deed in favour of defendant No.1. According to plaintiff he is in possession of the suit property. On these grounds he prayed to allow the application.

4. Defendant No.1 contested the application by filing her say at Ex.22. She denied all the contentions in the application. According to her on 07/03/2014 the plaintiff got executed power of attorney from defendant No.2 by playing fraud. So, on 16/05/2016 defendant No.2 issued advocate notice to the plaintiff for cancellation of power of attorney deed and also issued the public notice in daily newspaper 'Daily Aikya' and 'Tarun Bharat' on 13/05/2016. According to defendant No.1 she purchased the suit property for consideration amount of Rs.5,20,000/-. Since said transaction she is in possession

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of the purchased property. As per Mutation Entry 02/02/2017 her name has been recorded to city survey record which is not challenged by the plaintiff. On these grounds she prayed to reject the application.

5. I heard learned advocate Shri. S.K.Bhosale for the plaintiff and learned advocate Sau.M.V. Kulkarni for defendant No.1 at length. As suit is proceeded ex-parte against defendant No.2 no one remained present for defendant No.2.

6. Following points arise for determination and I record my findings for the reasons stated hereinafter;

Sr.No.	Points	Findings
1]	Does plaintiff prove that he has prima-facie case ?	No.
2]	In whose favour balance of convenience lies ?	In favour of defendant.
3]	Does plaintiff prove that he will suffer irreparable loss if temporary injunction is not granted ?	No.
4]	What order ?	As per final order.

R E A S O N S

AS TO POINT NOS. 1 TO 4 :-

7. Learned advocate for the plaintiff vehemently submitted

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that defendant No.2 had executed notarized power of attorney deed in favour of the plaintiff on 07/03/2014. At that time the plaintiff was put in possession of the suit property. He is ready to purchase suit property by paying balance consideration amount. However, defendant No.2 executed sale deed in favour of defendant No.1. As plaintiff was put in possession of the suit property defendant No.1 cannot cause obstruction to the plaintiff's possession.

8. On the other hand, learned advocate for defendant No.1 submitted that defendant No.2 never agreed to sell the suit property to plaintiff. Defendant No.1 has purchased suit property by paying entire consideration amount. Since said transaction defendant No.1 is in possession of the suit property.

9. I have given thoughtful consideration to the argument advanced by both the parties. According to the plaintiff defendant No.2 had agreed to sell the suit property and for that purpose on 07/03/2014 she executed notarized power of attorney.

10. On perusal of said power of attorney deed it is seen that said deed is totally silent with respect to the agreed consideration amount and also with respect to the payment of any earnest amount. Moreover, in the power of attorney deed it is nowhere mentioned that defendant No.2 had agreed to sell the suit land to the plaintiff.

On the other hand, power of attorney deed shows that defendant No.2 had executed said deed in favour of the plaintiff for the purpose of civil and criminal matters and also to sell the suit property. Recitals in deed nowhere show that defendant No.2 had agreed to sell the suit property to the plaintiff. Moreover, pleadings is totally silent as to what was agreed consideration amount. For this reason prima facie it is seen that defendant No.2 had not agreed to sell the suit property in favour of the plaintiff by executing any agreement. On the other hand, from the copy of sale deed dated 21/12/2016 it is seen that defendant No.2 has sold the suit property to the plaintiff by registered sale deed and put the defendant No.1 in possession thereof. So, also from extract of city survey it is seen that name of the purchaser has been mutated. For this reason prima facie it is seen that defendant No.1 is in possession of the suit property.

11. As per Section 53-A of the Transfer of Property Act read with Section 17 of the Indian Registration Act, if the proposed vendee is willing to protect his possession on the basis of agreement to sell then such agreement must be compulsory registered. But power of attorney deed dated 07/03/2014 is unregistered document. Moreover, it is totally silent about the agreement to sell the suit property by defendant No.2 to the plaintiff and also about putting the plaintiff in possession thereof. For this reason the plaintiff has failed to prove prima facie case. As defendant No.1 is a purchaser of the

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suit property, she will suffer irreparable loss, if temporary injunction is granted. Hence, I answer point Nos. 1 to 3 in the negative and in answer to point No.4, pass following order.

ORDER

1. Application at Exh. 5 is rejected.
2. Costs in cause.

Place : Vaduj

Date : 26.02.2021

(K. C. Mane)
Civil Judge, Senior Division,
Vaduj

(K. A. Jagtap) Stenographer