

ORDER BELOW EXH – 05
(Passed on 1st September, 2015)

This is an application under ***Order XXXIX Rule 01 of The Code of Civil Procedure***, for grant of temporary injunction restraining defendants from obstructing peaceful possession of plaintiff over the suit property. Suit is for declaration, cancellation of sale deed and perpetual injunction.

2. Subject matter of the suit is 1.02 H.R. land in survey No.04 situated at village Pardi, Tahsil Karanja (Gh), Dist. Wardha. (*hereinafter referred as “suit property”*). Suit property is the joint Hindu family property of plaintiff. Partition in the joint family of plaintiffs has not yet taken place. In May 2013, there was marriage of Chandrashekhar, the brother of plaintiff. Therefore, plaintiff was in need of money. Defendant No.3 assured to help the plaintiff on condition that, Rs.2,00,000/- will be given to him on interest at the rate of 4 percent per month and on executing a nominal agreement to sale in his favour. Considering the urgent need, plaintiff agreed. However, suit property was in the name of entire family of plaintiff. Therefore, as per the say of defendant No.3, a nominal partition-deed was prepared on 15/04/2013. On same day, agreement to sale was prepared and the amount was given to plaintiff. It was agreed that its repayment will be made after harvesting the crop in 2013-14. However, on 17/10/2013, defendants suddenly demanded the entire amount. They insisted the plaintiff for executing the sale-deed of suit property. They assured that after repayment of entire amount, the sale-deed will be reciprocated. Therefore, on same day without accepting any amount of consideration a nominal sale-deed was executed in favour of defendant No.1 & 2. On same day, an agreement to reciprocate is also

executed. On 24/11/2013, in presence of witnesses, entire borrowed amount alongwith interest is repaid by plaintiff. Defendants assured that, on 27/11/2013, the sale-deed will be reciprocated. However, such assurance was not complied. On 02/12/2013, legal notice was issued to defendants asking them to reciprocate the sale-deed. False reply to the notice was given. On 13/12/2013, defendants tried to install the board of their names in the suit property. However, plaintiff did not permit them. Defendant No.1 also lodged false report against plaintiff. Suit property is in the possession of plaintiff, as the possession was not handed over. Resultantly, cause of action arose and the suit is filed alongwith present application, seeking the order of restraining defendants from causing obstruction to his possession over the suit property.

3. Defendants have filed their say and written statement at **Exh.17**. They have denied the alleged money lending transaction and the nominal nature of the sale-deed. It is their case that, partition of suit property has already taken place and it is not a joint Hindu family property. Even mutation of partition has also been effected. It is their case that, on payment of value consideration of Rs. 6,00,000/-, defendant No.1 and 2 have purchased the suit property. On oral request by plaintiff, less amount of consideration is shown in the sale deed. On the basis of the sale-deed, defendant No.1 & 2 are having possession over the suit property and they are peacefully cultivating it. Plaintiff is not having possession over the suit property. No parallel agreement to reciprocate the sale deed was ever executed. Lastly, they have prayed for dismissal of suit and rejection of present application.

4. Perused the counter pleading. I have heard the arguments advanced by learned advocates for both the parties. After the entire arguments, when the matter was posted for order, again some documents are filed on record. Thereafter, again the matter was posted for hearing

on those documents. Considering the material on record following points arise for my determination. Findings thereon are recorded for the reasons to follow;

Points for determination	Decision
1 In whose favour there is prima facie case ?	...Plaintiff.
2 In whose favour the balance of convenience tilts?	...Plaintiff.
3 To whom irreparable loss will be caused, if, the application for temporary injunction is rejected?	...Plaintiff.
4 What order	Application is allowed

REASONS

As To Points No. 1 to 3

6. For convenience, these three points are taken together for discussion. Relief of temporary injunction is sought in the form of order of restraining defendants for obstructing the possession of plaintiff over the suit property. It is therefore that, the entire emphasis of present application as well as the arguments advanced by learned advocates for both the parties was on the aspect of possession of over the suit property. Needless to say that, no conclusion in regard to the possession can be drawn at such prima facie stage. However, it must be seen on prima facie basis as to who is appearing to be in possession of the suit property. Execution of the instrument of sale-deed by plaintiff in favour of defendant No.1 and 2 is admitted to both the parties. However, the actual nature of the transaction as well as the instrument is disputed. As per plaintiff, the sale-deed so executed was the outcome of money lending transaction, it was for security purpose and assurance was given to plaintiff that it will be reciprocated after repayment of the borrowed amount. Per contra, as per defendants it was an out and out sale transaction. Therefore, prima facie over look of the nature of said transaction is also to be made. Needless to say that, it will be avoided to given any premature or prima faice finding on the validity of sale-deed.

7. Most important in present case are the circumstances, which will never lie, even though men may lie. As per the affidavit of Chandrashekhar (Exh-23), who is brother of plaintiff, his marriage was on 15.05.2013 and his family was in need of money. On 15.04.2013 a nominal deed of partition has taken place and on the same day the agreement to sell the suit property was prepared. This is the most doubtful circumstance in present case. If the partition between the members of joint family of plaintiff has taken place on 15.04.2013, why was it so immediate and urgent for plaintiff to enter into the agreement to sell on the very same day. This prima facie show the co-relation between the deed of partition and agreement to sell. This co-relation actually strengthens the case of plaintiff.

8. Another material fact is that, the deed of partition is titled as “*apasi watni partracha lekh*”. However, if its recitals are gone through, it does not appear to be a memorandum of partition, rather, it appears to be a partition deed. Being a partition deed, it is a document requiring compulsory registration and without which, as per **section 49 of The Registration Act**, it does not carry any substantive value in the eyes of law, except for co-lateral purpose. If the partition-deed dt. 15.04.2013 itself does not effect actual partition between the joint family of plaintiff, then plaintiff has not got any authority to legally alienate the suit property. At this prima facie stage, it can be said that, the partition deed is not reliable document.

9. Most important instrument is the agreement to reciprocate the sale-deed executed on the same day of sale-deed. Signatures of defendant No.01 & 03 on this agreement, when compared with the signatures on the sale-deed in question, appear to be identical. Stamp paper for this agreement is appearing to have been purchased by defendant No.03. Recitals of this agreement is absolutely parallel to the case of plaintiff. It is clearly mentioned that, reciprocation of the sale-

deed will be done and the possession of suit property, even after the sale-deed, will be with plaintiff. What more is needed at this prima facie stage to infer prima facie that, the possession was not handed over by plaintiff to defendants.

10. To further corroborate, there are affidavits of Rajendra Tiple at **Exh-22** and Chandrashekhar Tiple at **Exh-23**. Rajendra Tiple is having his land one land next to the suit property. He has affirmed the possession of plaintiff over the suit property and that the possession of defendants was never over the suit property. Similarly, Chandrashekhar, who is the brother of plaintiff, has affirmed the possession of plaintiff over the suit property. Why these two persons will state false on oath, has not been explained by defendants.

11. Copies of the reports lodged with the police station are also filed on record. These reports indicate the prompt action on the part of plaintiff to agitate at right time against the sale-deed and its nature, as emphasized by defendants. It is also material to indicate that there was an attempt of obstruction to the possession of plaintiff over the suit property by the defendants.

12. Learned advocate for defendants has emphasized on entry of their names in the record of rights and argued that, it is a document of establishing possession as well as title of defendants over the suit property. Firstly, entries in record of rights does not confer any right, title or interest on the holder of it. They are merely made for fiscal purposes. Unless there are long-standing and undisputed entries in the record of rights, it does not attract any presumption of possession of any party. So also, the very instrument on the basis of which such entry is taken, is under challenge before this Court. Therefore, it will not be appropriate to rely on any such revenue entry which is the outcome of the instrument under challenge.

13. From the discussion supra, the validity of the very sale-deed, on the basis of which defendants are claiming to be in possession over suit property, is prima facie doubtful. Except the sale-deed, there is nothing on record to fortify the possession of defendants over the suit property. Therefore, on the basis of the prima facie preponderance of material and circumstances brought on record, it appears that plaintiff is having possession over the suit property. As the possession of plaintiff over the suit property is prima facie appearing, the prima facie case is obviously in favour of plaintiff.

14. In spite of prima facie possession of plaintiff over the suit property, if defendants are entering into suit property to establish their possession, then there is every possibility of plaintiff losing possession of the suit property to the defendants. This will certainly cause huge inconvenience to the plaintiff. So also, irreparable loss will be certainly caused to plaintiff. Therefore, balance of convenience tilts in favour of plaintiff and even irreparable loss will be caused to plaintiff, if the temporary injunction is not granted. Resultantly, I answer point No. 1 to 3 in the affirmative.

As To Point No. 4

15. From the findings in affirmative to the points supra, all the three parameters for grant of relief of temporary injunction are in favour of plaintiff. Therefore, I think it fit to grant the relief of temporary injunction to plaintiff. Cost of this application shall be cost in cause. Hence, I pass following order;

ORDER

- i. Application is allowed.
- ii. Defendants, their agents, servants or anybody claiming through them are temporarily restrained from causing any sort of obstruction to the prima facie possession of plaintiff over the suit property which is 1.02 H.R. land in survey No.04 situated at

village Pardi, Tahsil Karanja (Gh), Dist. Wardha., till the decision of this suit.

- iii. Cost of this application shall be the cost in cause.
- iv. Issues are framed today and parties to proceed with evidence expeditiously.

Karanja (Gh)
Dt.01.09.2015

(Ritesh R. Mawatwal)
Civil Judge Junior Division,
Karanja (Gh.)