CNR NO MHAH02-003327-2022

Spl.C.S. No. 267/2022
Trimurti Sugar Industries Ltd.,through Sumatibai Ghadge Patil & Ors.
-V/s-
Bajirao @ Karbhari Gaike & Ors.

Order below Exh. 5
(Delivered on 08-02-2023)

The plaintiffs have sought interim prohibitory injunction under order XXXIX Rule (1) & (2) of C.P.C., restraining the defendants 1 to 3 from creating any third party interest in the suit property.

2] Heard learned advocates for both the parties and perused the record and proceedings. Following points for my determination, arose for my consideration to which I have recorded my findings for the reasons discussed below -

SR. NO.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the plaintiffs are having prima facie case ?	Yes.
2.	Whether balance of convenience lies in favour of plaintiffs ?	Yes
3.	Whether irreparable loss would be caused to plaintiffs, if the temporary injunction, as sought for, is not granted ?	Yes
4.	What order ?	Application is allowed.

REASONS

3] Shortly stated the plaintiffs case is that the plaintiff no. 1 is the company registered under Companies Act 1956 while the plaintiff no. 2 is the educational society registered under Bombay Public Trust Act 1950. The plaintiff no. 1 has right to run educational institutions under its sanctioned memorandum of association. The defendant no. 2 & 3 are the sons of the defendant no. 1 who owns the property described in paragraph (1) of the plaint, hereinafter referred as the suit property, for the sake of brevity. It was received by the defendant no. 1 as project affected person from the government of Maharashtra in the year 1991. Thus, the name of Maharashtra Government was recorded in column of the owner as new tenure land of rehabilitation while the name of defendant no. 1 was recorded in other rights column. He was not convenient in its occupation as it was situated at far distance from his village so he wanted to purchase another alternate convenient property and therefore, he opened negotiations for the same. The suit property being situated adjacent to the boundary of the land owned by the plaintiff no. 1, it negotiated with the defendant no. 1 and he agreed to sale it at the rate fixed at Rs. 46,000/- per Acre. The plaintiff no. 1 paid an amount of Rs. 2,30,000/- out of agreed consideration to the defendant no. 1 but sale deed could not be executed at that time as as in the year 1999 it was class-II occupancy land granted to defendant no. 1 on new tenure for rehabilitation. The defendant no. 1 thus, agreed to obtain permission of its sale from the rehabilitation department of the Maharashtra Government and then to execute the sale deed. The defendant no. 1 has executed a 99 years agreement to sale which was registered at the office of sub-registrar Shevgaon on 23/02/1999 at sr. no. 411/1999. The defendant no. 1 also transferred possession and the plaintiffs are in possession thereof. The plaintiff has raised compound wall and two buildings in suit property. The plaintiff no. 1 has purchased other properties in the same area for its business and continued its work of building foundation, staff quarters, administrative buildings etc., but the work was stopped in between as the Maharashtra Government has issued directions that the air space between two factories shall be of at least 25 km instead of 15 km.

Subsequent to the execution of agreement to sale, the defendant no. 1 had time to time assured the plaintiffs to execute the sale deed and has also obtained money from under the pretense that an alternate land is to be purchased by him for demonstrating the exchange transaction as sale deed could not be executed without permission but the exchange deed could be. Therefore, the plaintiff has time to time provided money to defendant no. 1 through he has purchased different lands in his name and in the name of his family members through registered sale deeds. The defendant no. 1 has purchased land gut no. 527/2 situated at village Mungi measuring 1H 8R under registered sale deed no. 956/2000 in the joint name of himself and his brother for which whole consideration including stamp duty expenses i.e., Rs,. 1,10,520/- were paid to him by the plaintiffs. Thereafter, he has purchased another property land gut no. 531/1 situated at village Mungi measuring 81R in the name of his mother under registered sale deed sr. no. 2101/2002 for which whole consideration including stamp duty expenses i.e., Rs. 1,50,370/- were paid by the plaintiffs. Then he, purchased remaining 81R of land of Gut no. 531/1 in his own name under registered sale deed no. 2102/2002 for which the plaintiffs paid an amount of Rs. 1,50,310/- to him. Then, again on assurance of defendant no. 1 to obtain permission and execute sale deed the plaintiffs paid him Rs. 1,75,100/- through which he himself purchased as alias, through registered sale deed no. 2314/2011, the land earlier purchased in name of his mother. In this manner, the defendant no.1 & 2 took an amount of Rs.8,16,300/- from the plaintiffs and assured to do all the needful activities in the direction to honor the agreement to sale.

The defendant no. 2 joined the company of the plaintiff no. 1 as store keeper in the year 2009 and worked as mess manager from 2010 to 2015 and was visiting the office of the plaintiff no. 1 & 2. Even the defendant no. 1 was visiting the office of the plaintiff no. 1 & 2. However, the defendant no. 2 was fired from services of plaintiff for embezzlement of money and since then he alongwith defendant no. 1 started to blackmail the the plaintiffs and they avoided to execute the sale deed. On 21-05-2018 plaintiffs served through registered post AD the defendant nos. 1 to 3 with a legal notice through advocate Snehal Chavan and asked them to obtain permission & execute sale deed until 30-08-2018 but they did not act accordingly and even not replied to it until 21-04-2019 though in between this period they have met the plaintiffs in front of the mediators of transaction and assured to execute sale deed by accepting additional consideration. On 21-04-2019 the defendant no. 1 & 2 accepted cheque of Rs. 3,00,000/- agreed to receive the the remaining amount of Rs. 2,00,000/- on execution of sale deed, have executed supplementary agreement on stamp paper of Rs. 500/- notarised before Notary Public wherein they have acknowledged the receipt of amounts and assured to execute the sale deed and it was also agreed by the defendant no.1 that he will pay Rs. 2,00,000/- to the defendant no. 3. The plaintiff no. 1 executed a supplementary notarised agreement in favour of plaintiff wherein they agreed to obtain permission for transfer until 22/07/2019 and execute sale deed until 08/08/2019. The original notarised agreement was kept with the Notary Public as the defendant no.1 agreed to pay Rs. 2,00,000/- to the defendant no. 3 in front of Notary public upon which he would sign the agreement before Notary public. The plaintiffs on 22-04-2019 gave cash of amount of Rs. 3,00,000/- to the defendant no. 1 & 2 and received the cheque of Rs. 3,00,000/- paid a day before from the defendant no. 1 & 2 as t would not have been honoured for the limitations imposed by RBI on the Nagar Urban Co-operative Bank on which said cheque was drawn. The defendant no. 1 however, did not pay an amount of Rs. 2,00,000/- to defendant no. 3. The defendant no. 1 & 2 then with the advice of Notary Public removed the name of defendant no. 3 from said agreement, got it notarised and delivered it to plaintiffs in two months.

Actually, the defendant no. 1 got his name mutated to suit property as owner converted it into occupancy class I on 30-09-2020 and did not execute the sale deed as agreed. Actually, plaintiff has complained to local Talathi on 12-02-2021 and asked him not to issue any revenue record copies of suit property to the defendants when they identified the malafides of the defendant no. 1 & 2. The plaintiffs also published a notice in local newspaper on 18-02-2021 and asked the defendant no. 1 & 2 to execute the sale deed until 15-03-2021. They also served the defendant no. 1 & 2 with notice on letter head of defendant no. 1 with copy of published notice and also directed them not to create any third party interest. However, the defendant no. 1 & 2 on 24/02/2021 obtained a loan of Rs. 20,00,000/- from the defendant no. 4 against the mortgage of suit property. Plaintiffs through notice dated 06-03-2021 informed the defendant no. 4 about the agreement to sale dated 23-02-1999 & supplementary agreement dated 21-04-2019 and that the plaintiffs are in possession of suit property and have constructed on it. Its copies were endorsed to defendant no. 1 & 2, revenue and police departments. The plaintiffs again served the defendant no. 4 with another notice on the same day and its branch manager, in pursuance to said notice, has visited the suit property on the same day and noticed that the defendant no. 1 & 2 have cheated them by showing him a different property outside the compound of the suit property and he filed complaint against the defendant no. 1 & 2 on 08-03-2021 and on 13-03-2019 the plaintiffs have asked the defendant no. 4 to get the mutation entry of mortgage charge on suit property cancelled. On 23-05-2022 the plaintiff send another legal notice and demanded to execute sale deed on 20-06-2022 before office of sub-register but the defendants did not act accordingly but refused to execute the sale through the notice dated 27-07-2022 sent through Advocate Ashok Gandhi. The plaintiffs replied to it on 06-08-2022 through Adv. Snehal Chavan to which the defendant no. 1 & 2 gave counter reply on 13-09-2022 which was received by the plaintiff on 24-09-2022. On 07-10-2022 the plaintiffs came to know through its employee that the defendants are about to transfer the suit property to third person and therefore, they have filed the present suit seeking specific performance of contract and preferred this application claiming interim prohibitory injunction to prevent involvement of third party interest during pendency of suit.

4] Defendant no. 1 & 2 have objected the application through reply Exh.19 predominately on the ground that suit is hopelessly barred by limitation apart from other objections of mis-joinder of parties, bar of jurisdiction contained in Bombay Tenancy & Agricultural Lands Holdings Act and also for rule of estoppel as according to them, in the notice dated 21-5-2018 the plaintiffs' have claimed only refund of amount and not specific performance of contract. They admit that the suit propertyw as allotted to the defendant no. 1 being project affected person as Class-II occupancy land by the State and the name of Collector and Deputy Director Rehabiliation, Ahmednagar was recorded in ownership column under mutation entry no. 1380. They claim that as suit property was allotted against the ancestral land of the defendants, the suit property though allotted in name of defendant no. 1 alond but the defendant nos. 2 & 3 were and are co-owners. They denied that defendant no. 1 agreed to sale the suit property to that plaintiff no. 1 but claim that it was given on lease of 99 years which has been forged by the plaintiffs. In respect of supplementary agreement dated 21-4-2019, they claim that it has been brought into existence by plaintiffs against the free will of the defendant nos. 1 & 2. They have also denied that the plaintiffs have paid any amount to them for and under an agreement to sale the suit property but claim that the plaintiff no.1 being the body corporate could not make cash payments of such huge amounts. They also claim that the plaintiffs are running various educational institutions and hostel at Shevgaon and Newasa and in order to get the ownership over the property leased out to them, they have filed the false suit. They have denied rest of all allegations and also prayed for dismiss of application.

5] Defendant no. 3 has however not denied the pleadings of plaintiff but admitted almost all of it through his written statement Exh. 25.

6] Needless to mention that the relief of interim injunctions governed by Order XXXIX Rule (1) & (2) CPC primarily depends upon the existence of prima facie case in favour of the plaintiffs. As observed by the Hon’ble Apex Court in case of **Dalpat Kumar and another Vs. Prahlad Singh and others (1992) AIR (SCW) 3128**, burden lies on the plaintiff to prove prima facie case in his favour. The Hon’ble Apex Court in the said authority has ruled on the term prima facie case is the case not to be confused with prima facie title which has to be established on evidence at the trial, but a substantial question raised bona fide which needs investigation and decision on merits. The Hon’ble Apex Court has further ruled that the existence of prima facie right and infraction of the enjoyment of the property or the right is a condition to grant injunction. The Hon’ble Apex Court further held that prima facie case by itself is not sufficient to grant the injunction unless the plaintiff proves the factum of irreparable injury which could not be adequately compensated by way of damages and on proof of balance of convenience which rests at the discretion of the Court.

8] The ld. Advocate for the plaintiff has submitted that the plaintiff has proved prima facie case through the documents tendered by it alongwith the suit and the malafide conduct of defendant no. 1 & 2 is reflected from the written statement of defendant no. 3. She has further submitted that the balance of convenience leans in favour of the plaintiffs as they have parted with huge amounts and are in possession of suit property from the year 1999 and thus, any act of defendant to create third party interest in the suit property would result in irreparable loss to plaintiffs which could not be compensated in money. Ld. Advocate for the defendant nos. 1 & 2 has argued that the suit is not maintainable on several counts as narrated in their written statement. The plaintiffs does not have any prima facie case as the agreement of the year 1999 is a lease deed and not an agreement to sale. Further, there is no resolution of the board of directors of plaintiff no. 1 and trustees of plaintiff no. 2 to show that the plaintiff no. 1 & 2 have resolved to filed the suit. He has cited the authority of the Hon'ble Supreme Court in case of **Kashimath Samsthan & Anr. Vs Shrimad Sudhindra Swamy & Anr**. AIR 2010 Supreme Court 296, to show that the party who does not prove prima facie case, injunction cannot be granted even if such party makes out the case of balance of convenience and irreparable injury.

10] The documents tendered by the plaintiff including the agreement to sale of the year 1999 and the supplementary agreement of 2019 prima facie shows that the defendant no. 1 has agreed to sale the suit property. The reason is that the agreements speaks of the difficulty in getting the title deed executed for the class II occupancy character of the suit property and also that vendor will executed sale deed after it is converted to class I occupancy character. The defendant no. 1 & 2 does not deny the execution of both the agreement but claim that in the agreement of the year 1999 plaintiff inserted some material later on and the agreement of year 2019 was executed by them without their free consent. The objections raised by the defendant as regards limitation, bar jurisdiction of civil court and applicability of rule of estoppel are not strong enough to deny the proof of prima facie case by the plaintiffs. In fact, the admission of execution of agreement of 1999 and 2019 alongwith the other documents like the copy of notices to defendants, their reply, copies of letters addressed to revenue and police officers also corroborates the pleadings in the plaint. The question of limitation is mixed question of law and fact. Further, the documents filed by the plaintiffs show that defendant nos. 1 & 2 have not denied the specific performance after conversion of suit property to Class I occupancy until the notice dated 27-07-2022 given by them through Advocate Gandhi. Thus, on perusal of record and documents filed by the plaintiffs it prima facie appears that defendant no.1 has agreed to execute the sale deed. Therefore I hold that the plaintiff has prima facie case.

11) Balance of convenience certainly rests at the discretion of the Court. To weigh balance of convenience means that there must be a proper balance between the parties and the balance cannot be one sided affair. The grant of interim injunction is a discretionary and equitable remedy and the power to grant injunction must be exercised in accordance with sound judicial principles. Equitable considerations are required to be kept in mind while exercising the discretion. There is no material at this stage placed by the defendant nos. 1 & 2 or any grave lacunae pointed by the defendants no. 1 & 2 which would disentitle the plaintiffs of discretionary remedy. As the defendants have agreed to transfer the suit property to the plaintiffs, balance of convenience leans in favour of plaintiffs. It would be rather inequitable to refuse the interim relief as it may result in multiplicity of proceedings. As regards irreparable loss, certainly in the back drop of the material on record it

is the plaintiff who will be put to irreparable loss in absence of injunction. The plaintiffs are admittedly in the possession of property through transfer and title to another without adjudication of plaintiffs right in the present suit would cause irreparable loss to plaintiff which could not be compensated in terms of money. Therefore I record my findings to point no. 1 to 3 in affirmative and conclude with the following order -

ORDER

1) Application is hereby allowed.

2) The defendant no. 1 to 3 are hereby restrained from creating any third party interest or alienating the suit property until further orders.

3) Costs in cause.

(Smt.S.G.Agrawal)
13th Jt.Civil Judge, Senior Division
Ahmednagar

Date :- 08/02/2023.
Place :- Ahmednagar.