

ORDER BELOW EXH. 05
(Passed On 09.10.2018)

This is an application for temporary injunction vide Order 39 Rule 1 of Civil Procedure Code, 1908. **(Hereinafter referred to as C.P.C. In short)** for grant of temporary injunction against defendants in a suit for specific performance of contract and permanent injunction.

02] Brief facts of application are as under :

The non-applicant No. 1 is the cousin brother and non-applicant No. 2 to 4 are cousin sisters of the applicant. In the year 1990 a partition was effected of the Gat No. 350 and 342. By way of said partition non-applicant No. 1 became the owner and possessor of 0.62 Acre and 0.97 Acre of land. For the purpose of marriage of his sister the non-applicant No. 1 and deceased Raghubai (Mother of non-applicant No. 1) has effected an agreement to sale dated 29.05.1990 in favour of the applicant. The said agreement to sale was effected in presence of two attesting witnesses namely Manikrao Bhendarkar and Bakaram Bhendarkar. By way of said agreement the 0.97 Acre of land of Gat No. 342 and 0.62 Acre of land from Gat No. 350 was agreed to sale to the applicant for a total consideration of Rs. 10,670/- + 6200/- = 16870/- and the said amount was paid to the non-applicant who subsequently on 29.05.1990 handed over the possession to the applicant Niranbai Donode. Due to the continuous possession of the applicant Tahsildar, Sadak Arjuni on 05.02.2015 passed an order and directed to enter her name in the

7/12 extract.

03] Being the cousin brother of applicant she has never insisted to execute a sale deed. However, when she knows about the taking of loan by non-applicant from Wainganga Kshetriya Gramin Bank, Pandhari on the basis of false documents she sent a legal notice to the non-applicant No. 1 for execution of sale deed and to remain present on 16.01.2017 at Sub-Registrar Office, Sadak Arjuni. Since the non-applicant has not appeared for execution of sale deed, she has filed a suit for specific performance of contract and permanent injunction. The non-applicant on the basis of false documents tries to sell out the said land to the third party and also tried to dispossess her from the said land, therefore she has prayed for temporary injunction against the non-applicant No. 1 during the pendency of civil suit.

04] The non-applicants appeared and resisted the application below Exh-05 by filing their composite written statement cum reply below Exh-20. The non-applicants have also filed the counter claim under Order 8 Rule 6 (a) of Civil Procedure Code and prayed for permanent injunction against the applicant/original plaintiff. The non-applicants specifically submitted that Soma Bhendarkar was the common ancestor of Motiram Bhendarkar and Bakaram Bhendarkar. After the death of Soma Bhendarkar in the year 1965 the names of Motiram and Bakaram was mutated on 7/12 extract. Both the brothers have taken possession 2.45 H. R. of land respectively and there was no partition effected between them. The said possession on 2.45 H.R. of land each was taken as a matter of family adjustment/necessity. In the year 1975 after the death of

Motiram and the names of his legal heirs was mutated in the 7/12 extract. As per the submission of counsel for non-applicant No. 1 in the year 1990 non-applicant No. 1 was taking education and all of his sister were not married and therefore, the story framed by the applicant that for bearing the expenses of marriage he has executed the agreement to sell in favour of applicant dated 29.05.1990 was totally false. He further submitted that the mother of non-applicant No. 1 was died in the year 2005 and till her death the applicant has not taken any steps nor filed any suit which shows that the agreement filed along with the documents was not executed at all and the same is forged. Thus, he prayed for rejection of the temporary injunction application with cost.

05] Heard the learned counsel for applicant and non-applicant. On the basis of fact, contentions advanced by the rival parties and documents filed on record following points arise for my determination. I have considered them at length and recorded my findings thereon followed by reasons thereof:

<i>Sr. No.</i>	<i>Points</i>	<i>Findings</i>
1	Whether applicant has prima facie case?	In Affirmative
2	Whether balance of convenience lies in favor of applicant?	In Affirmative
3	Whether irreparable loss would cause to applicant, if temporary injunction is refused?	In Affirmative
4	What order?	Application is Allowed.

R E A S O N S

As to point No's. 1 to 3:-

06] The point No. 1 to 3 are interlinked with each other. So also evidence on all these three points appears to be common. Therefore, in order to avoid repetition of facts and evidence I have chosen to consider all these three points conjointly.

07] In order to substantiate the claim of temporary injunction, it is necessary on the part of applicant to show that he has a prima-facie case, balance of convenience lies in his favor and irreparable loss is likely to cause to him, if temporary injunction is refused.

08] The applicant contended that, on 29.05.1990 the non-applicant No. 1 and his mother Raghubai Bhendarkar had executed the agreement of sale in favour of the applicant. In support of her contention she has filed the original agreement on stamp paper which prima facie shows that the applicant had executed the agreement to sale of the land situated at mauza Pandhari, Gat No. 342, ad-measuring area of 0.97 decimal for Rs. 10670/- and Gat No. 350 ad-measuring area of 0.62 decimal for Rs. 6200/-. It also prima facie shows that, on the same day they have received the said amount and handed over the possession and also undertaken to execute the deed of sale as and when necessary. The said document prima shows the existence of the agreement to sale which the non-applicant has denied and submitted that the said document is forged in itself. It also shows that the said document is unregistered agreement to sale. However, in the case of *Mahadeo Nathuji Patil -Vs-*

Sarjabai Khushalchand Lakkad, 1994 Mh.L.J. 1145 it has observed that the statutory protection granted under section 53 (a) of the Act to a transferee in possession to continue his possession under an unregistered contract or instrument of transfer is not lost by laps of time to file a suit for specific performance of contract for acquiring title, if he satisfies the essential requirements of the said section 53 (a) of the Act, and it is not incumbent upon him to file such a suit within time to protect his possession after the laps of time.

09] Perusal of the aforesaid observation of the Hon'ble court, in the instant civil suit there is a presence of an unregistered agreement to sale. Therefore, the aforesaid citation is applicable to the case in hand and thus as per my view the applicant needs to prove the said agreement to sale by examining the attesting witnesses. Thus, I am of the considered view that the applicant is having a prima facie case to prove her title and the existing possession.

10] So far as the balance of convenience is concerned the non-applicant has resisted the agreement to sale and submitted it to have been a forged document. Thus, it is necessary for both the applicant and non-applicant respectively to prove and respectively disprove the said agreement to sale in order to prove their side. Thus, it is difficult to say at this moment that the said document is relevant or admissible so far as the applicant is concerned. However, the whole claim of the suit for specific performance of applicant is based on the said unregistered agreement to sale deed which needs to be proved by evidence. Thus, I opined that the balance of convenience lies with the plaintiff to a much higher extent than

the defendant/non-applicants.

11] With regard to the irreparable loss: It is the contention of the applicant that from the date of 29.05.1990 she is in continuous possession of the suit property. She also submitted that her possession is uninterrupted and absolute. If we consider the date of agreement i.e. 29.05.1990 from 20.12.2016 i.e. the date of sending the legal notice to the non-applicant it covers 26 long years. Since the prima facie case lies with the applicant in my view if the temporary injunction is granted the applicant will have the opportunity to prove her case. Per contra, if the temporary injunction is rejected there is a possibility that the non-applicant will transfer the said land to the third person and in that case the legitimate right, if any, of the applicant will not sub-serve and there will be a possibility of a loss of an applicant which can not be compensated in terms of money. On the other hand, if the application is granted there will not be any legal injury or loss caused to the non-applicant. I therefore opine that, taking caution at the early stage is very much necessary to prevent causing irreparable loss to both the parties and also prevent having miscarriage of justice.

12] Hence, in view of facts and circumstances referred above, I am of the considerate opinion that, the applicant has a prima-facie case, balance of convenience lies in his favor and irreparable loss is likely to cause to her, if application for temporary injunction is refused. Therefore, I answer the point No's 1 to 3 in affirmative and as to point No. 4, I proceed to pass following order.

ORDER

1. Application is allowed.
2. Non-applicants or anyone else on their behalf is hereby restrained temporarily from transferring 0.97 Acre land of Gat No. 342 and 0.62 Acre land of Gat No. 350 to any third person till further orders.
3. The non-applicant is also restrained temporarily from dispossessing the applicant from the aforesaid 0.97 Acre land of Gat No. 342 and 0.62 Acre land of Gat No. 350 till the final disposal of suit or until further order.
4. Dictated and pronounced in an open court.

Date: 09.10.2018

[Nitin Dhoke]
C.J.J.D., Sadak Arjuni
DIST. GONDIA.

CERTIFICATE

"I affirms that the contents of this P.D.F. File judgment are same word for word as per original order"

Name of Stenographer (L.G.): - Dineshkumar C. Sakure

Name of the Court:- (Nitin R. Dhoke)
C.J.J.D. & J.M.F.C.,
Sadak Arjuni

Date:- 09.10.2018

Judgment signed by presiding officer on :- 11.10.2018

Judgment upload on:- 11.10.2018