

ORDER BELOW EXH. 5 IN RCS No.960/2021
CNR No. MHPU02-004383-2021)

1] Present application is filed on behalf of plaintiff for temporary injunction against defendant No. 5. Defendant No.5 has filed reply below exhibit No.19. Perused case file along with the documents heard both learned counsel at length.

2] The present application is filed for the temporary injunction. Hence, in view of order XXXIX Rule 1 of the Code of Civil Procedure, I have taken following points for consideration and recorded findings thereon with reasons.

3] The points along with my findings thereon are as under.

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether the plaintiff has a : prima-facie case?	No.
2] Whether balance of : convenience lies in favour of plaintiff?	No.
3] Whether irreparable loss will : be cause to the plaintiff if application is rejected?	No.

4] What order? : As per final order.

REASONS

As to Point Nos.1 to 3:-

4] The plaintiff has filed the present suit for correction of conveyance deed or cancellation of conveyance-deed and injunction. It is contended that plaintiff is Fortune Shubhan Sahakari Gruhrachna Sanstha Ltd. The said housing scheme having building Nos. A, B and C which was developed by builder i. e. defendant No.1. Plaintiff sanstha which was constructed and developed on the property situated at Mouje Yevlewadi, Tal. Haveli, Pune in S.No. Hissa No.1/6//a, 1/6/B, 1/6C, and 1/6D. The road was given from the side margin of the said land as per the sanctioned map by Pune Municipal Corporation for plaintiff sanstha only. But, defendant No.1 with the then Chairman, Secretary and treasurer i.e. defendant No.2, 3 and 4 misused their rights fraudulently registered deed of convenience document No.12770/2018. It is contended in the said document that defendant Nos.2, 3 and 4 have given right to defendant No.5 Fortune Subhan Phase-2 , building D to use the road of from southern side of the common land and ingress from east side of property of plaintiff. But, it was not discussed and decided in the General Body Meeting which was held on 06.10.2018 of the plaintiff sanstha and resolution was also not passed in regarding right to use road from common road of southern side of plaintiff sanstha. However, the right to use the southern side road to defendant No.5 from the plaintiff sanstha

was granted illegally by defendant Nos.2, 3 and 4. Defendant Nos.2 to 4 neither issued any notice to members of plaintiff sanstha nor discussed with them and obtained their consent, given right to defendant No.5 for using south side road from common land and entrance from east side. Defendant Nos.2 to 4 in collusion with defendant No.1 misused their rights and registered conveyance-deed and cheated members of plaintiff sanstha by giving right to use of common space for road to third party i. e. defendant No.5 and it is also mentioned in the conveyance deed illegally. Defendant Nos.2 to 4 had misused the powers by and by committing fraud upon the Members of Society by misusing the resolution dated 06.10.2018 have illegally permitted defendant No.5 to use the suit road.

5] In the month of January, 2020, the flat holders of defendant No.5 started to use the road and plaintiff told them that suit road is not for their use. At that time plaintiff came to know about the illegal act of defendant Nos.1 to 4. The members of plaintiff have started to settle the dispute amicably but defendant No.5 have denied it and illegally started to use the road. These plaintiffs have lodged complaints against defendant No.5 also. Hence, the present suit is filed. By way of this application, prayed for interim relief.

6] The defendant No.5 vide reply below exhibit No.19 have contended that, the right to use suit road has been given by defendant No.1 by registered deed of agreement and the flat

holders have purchased flats after confirming the right to use of suit road. Defendant No.5 is not party to that registered document. Now, 96 flat holders are residing there and using the said road. They have no any other road available ingress and egress. The intention of plaintiff and defendant No.1 to restrain defendant No.5 and to harass all the flat holders. If injunction granted then the defendant No.5 will cause loss but plaintiff will not suffer any loss. Hence, the defendant No.5 prayed to reject the application.

7] The suit is based on the deed of use to road executed by defendant Nos. 1 to 4 and plaintiff. Plaintiff filed suit alleging against defendant Nos.1 to 4 that, they had committed fraud upon plaintiff and misused the resolution and wrongly executed the conveyance-deed. The defendant No.5 is the Co-operative Society in which 96 flat holders are residing. This defendant has upon believing the right of use of suit road have further proceed to purchase the flats. Defendant No.1 himself has constructed the phase II building. Hence, there is no any role of defendant No.5 in execution of the the alleged conveyance-deed. Hence, unless and until the matter will be finally decided on merit it cannot be hold that the alleged deed needs to be corrected or not. At this juncture, the document by which defendant No.5 has got right to use road is in existence. Hence, by way of the registered deed under challenge the defendant No.5 had got right to use the suit road. Hence, plaintiff failed to show the prima-facie case.

8] As the registered deed under challenge is still in existence, defendant No.5 have got right to continue the suit road. The defendant No.5 is the residential society. It is admitted that 96 flat holders are residing there. Hence, if injunction is granted against defendant No.5 then irreparable loss will cause to them. Per contra, if injunction as prayed not granted, plaintiff will not suffer any loss. The defendant No.5 got right in virtue of registered deed which is still in existence hence, balance of convenience also lies in favour of the defendant No.5.

9] In view of all the above discussion, I am of the view that plaintiff has no prima-facie case. Balance of convenience also does not lie in plaintiffs favour. Injunction if not granted, plaintiff will not suffer any irreparable loss. Accordingly, I record my findings on point No.1 to 3 in the negative.

10] **As to point No.4 :-**

As the findings on point Nos.1 to 4 are recorded negative, the application deserves to be rejected. Hence, order.

ORDER

- 1] Application stands rejected.
- 2] Cost in the main cause.

Date: 14/12/2021.

(K. M. Pingle)
2nd Addl. Judge, Small Causes Court,
Pune.

I affirm that the contents of this P.D.F. file are same word for word as per original.

<i>Name of Steno</i>	<i>S.G.Datrang</i>
<i>Name of the Court</i>	<i>K.M.Pingle, 2nd Addl.Small Cause Judge and Civil Judge, Sr.Division, Pune.</i>
<i>Date of Judgment/Order -</i>	<i>14/12/2021</i>
<i>Judgment/Order signed on by P.O. on-</i>	<i>14/12/2021</i>
<i>Judgment/Order uploaded on-</i>	<i>17/12/2021</i>