



License To: **Adv.  
Kiran Kulkarni,  
Tuljapur,  
Maharashtra**

Copyright © Click  
Judgements Pvt.  
Ltd.

---

**2010 CJ(Bom) 3444**

**HIGH COURT OF BOMBAY (AURANGABAD BENCH)**

**BABAN ANANTRAO NAIK V/S SAU PRAMILA UTTAMRAO YENARE & ANR**

**Decided On:** 12 October 2010

---

**Hon'ble Judges:** S V Gangapurwala, J

**Appeal No/Type:** Appeal From Order No 31 of 2010

**Advocates:** N V Gaware, V D Hon

**Acts Referred:**

**Temporary injunction-Grant of- Application for-Determination of-Factum of possession-At time of determination of said application, factum of possession only be a relevant factor-Whether possession, lawful or not would not be subject-matter of enquiry. 2004 (1) SCC 769-Relied on.- At the time of determination of an application for temporary injunction, the factum of possession would only be the relevant factor. Whether the possession is lawful possession or not would not be the subject-matter of enquiry. Whether the amount of consideration has been paid or not, whether the plaintiff was ready and willing to perform his part of contract or not, would all be the issues which can be decided only after the parties adduce evidence. It would be premature at this stage to give findings on the said issues.**

**Eq. Citation:** 2011 (6) AIIMR 15

[+] **Cases Referred (1)**

[+] **Case Cited In (3)**

---

## **JUDGEMENT**

**1.** This Court vide its Order dated 02/03/2010 had ordered issuance of notice to the respondents with an indication that the Appeal would be finally heard at the stage of admission. With the consent of the learned counsel for the parties, the Appeal is heard finally at the stage of admission.

**2.** Heard Mr. N.V. Gaware, the learned counsel for the appellant and Mr. V.D. Hon, the learned counsel for the respondents.

**3.** The present appellant has instituted Special Civil Suit No. 47 of 2009 for specific performance of contract and for declaration that the sale deed dated 05/12/2008 executed by defendant no. 1 in favour of defendant no. 2 is illegal, null and void and also for perpetual injunction. Along with the said Suit, the present appellant also filed an application for temporary injunction (Exh. 5) restraining the respondents from interfering with the possession of the appellant in the suit premises.

**4.** In pursuance to the suit summons and the notices, the present respondents appeared and contested the Suit and the application ( Exh. 5 ) by filing Written Statement. The Civil Judge (Sr. Division), Ahmednagar vide Order dated 11/01/2010, rejected the temporary injunction application. The appellant has assailed the said order in the present Appeal from Order.

**5.** Mr. Gaware, the learned counsel for the appellant contended that at the stage of determination of an application for temporary injunction, only the factum of possession is relevant. The Court has dilected itself on the validity of the transactions about the payment of consideration amount. All these factors can be proved only after adducing evidence and at the time of the final trial. According to him, the trial Judge has not considered the factum of possession at all. On the contrary, in para no. 5 of its order, the trial Court has accepted that the plaintiff is doing the business of automobiles in the suit shop. But, on the premise that the plaintiff has failed to prove his lawful possession, has negatived the relief of injunction.

**6.** Per contra, Mr. Hon, the learned counsel for the respondents/original defendants contended that the trial Court has rightly considered all the aspects.

The plaintiff has not approached the Court with clean hands and the party who has not approached the Court with clean hands is not entitled for equitable relief of injunction. According to him, the plaintiff is not in possession of the suit property and is not entitled for injunction. According to him, respondent no. 2 is bonafide purchaser for the valuable consideration of the suit property and is legitimately in possession of the same.

**7.** With the assistance of the learned counsel, I have gone through the Judgment and the pleadings of the parties and the documents on record.

**8.** At the time of determination of an application for temporary injunction, the factum of possession would only be the relevant factor. Whether the possession is lawful possession or not would not be the subject matter of enquiry. Whether the amount of consideration has been paid or not, whether the plaintiff was ready and willing to perform his part of contract or not. would all be the issues which can be decided only after the parties adduce evidence. It would be premature at this stage to give findings on the said issues.

**9.** From the perusal of the Judgment of the lower Court, it is manifest that the trial Judge has referred to the photographs filed on record and has also observed that the plaintiff runs business of automobiles therein. But, has further observed that plaintiff has failed to prove that he is in lawful possession. Even a trespasser in settled possession is entitled for injunction as has been held by the Apex Court in the case of Kame Gowda (dead) by L.Rs. V/s M. Varadappa Naidu (dead) by L.Rs. and another, 2004 1 SCC 769. Further, even the defendants had come forward with the case that the plaintiff was in possession of the suit property on the basis of Leave and Licence agreement of 7 years. Once it is admitted that plaintiff was inducted in possession of the suit property, then the presumption would be in favour of the continuity of possession unless the defendants pleads and proves that the plaintiff was dispossessed. In the present case, no such prima facie evidence appears on record. More over, taking into account the observations of the Civil Judge (Sr. Division), Ahmednagar, who has held that the plaintiff runs the business of automobiles in the suit premises, then the necessary corollary would be that he is in possession. Whether the possession is lawful or not would be decided after the evidence is led. Prima facie, as such, it appears that the plaintiff is in possession of the suit property.

**10.** In light of the same, the impugned order is quashed and set aside and the parties are directed to maintain statusquo as this Court vide its order dated 02/03/2010 had directed the parties to maintain statusquo and said order is in force till today. As such, the same order would continue till the disposal of the Suit.

**11.** The trial Court shall make an endeavour to decide the Suit as early as possible and preferably up to 30/09/2011.

**12.** The present Appeal from Order is accordingly disposed off with no order as to costs.