

IN THE COURT OF CIVIL JUDGE, S.D., PUNE**Special Civil Suit No.632/2016**

Mr. Vikas Aatole

-- Plaintiff.

V/s.

Mr. Sonu Panchras & ors.

-- Defendants.

ORDER BELOW EXH-5

This is an application filed on behalf of the plaintiff for temporarily restraining to the defendants from creating third party interest in the suit property.

Brief facts of the application are as under :-

2. The defendant Nos. 1 is the owner and possessor of the suit property described in plaint para 1(B). Originally the suit property received to the forefather of defendant No.1 from the State of Maharashtra on the basis of Navin Sharth (New condition). After the death of father of the defendant No.1, the agricultural landed property described in plaint para 1(A) recorded on the name of defendant No.1 and other heirs of father of the defendant No.1 by M.E. No. 993. The defendant No.1 filed RCS No. 277/08 on 22/08/08 against him, brother and other heirs for effecting partition before the Court of Civil Judge, Jr. Division, Shirur, Dist.Pune. During the pendency of the said civil suit, the defendant No.1 had agreed to sell the suit property in favour of the plaintiff for total consideration of Rs. 5,50,000/-. The agreement to sale deed executed by the defendant No.1 in favour of the plaintiff in respect of the suit property dated 12/11/2013 before

the Sub-Registrar office, Shirur bearing document No. 6030/13. Thereafter, on 13/12/2013 the defendant No.1 or other parties in RCS No. 277/08 compromised the suit and the parties had filed compromise pursis at Exh.62 and the said compromise recorded by the Court in RCS No. 277/08 dated 13/12/2014. By way of said compromise, the suit property came in the share of defendant No.1. On the day of agreement to sale deed dated 12/11/2013, the plaintiff had given entire amount of consideration of Rs. 5,50,000/- to the defendant No.1. The defendant Nos. 2 to 6 were also agreed to the said agreement to sale deed and they put their signatures on the said agreement to sale deed dated 12/11/2013.

3. In view of agreement to sale deed dated 12/11/2013, the defendant No. 1 was agreed that he will obtain permission from the District Collector and also sought measurement by Government and thereafter, he will execute registered sale deed in favour of the plaintiff. The defendant No.1 has also executed general Power of Attorney in favour of the plaintiff dated 12/11/2013. After seeking permission from the District Collector, thereafter within two months, the defendant will execute sale deed in respect of the suit property in favour of the plaintiff. It was also agreed by both the parties that on the day of registration of the sale deed, the defendant will deliver possession of the suit property to the plaintiff. Thereafter, on 29/12/2014 the plaintiff made application before the Collector for seeking permission for alienating the suit property. But thereafter on 27/04/2015, the plaintiff made objection in the said application before the Collector and thereafter, the plaintiff came to know that the defendant No.1 is not ready to execute the registered sale deed. The plaintiff was and is ready to execute registered sale deed in respect of

the suit property. The plaintiff is having prima facie case, balance of convenience also lies in his favour. If this application is not allowed, then the plaintiff will suffer irreparable loss which will not compensate in terms of money. Hence, this application.

4. Defendants resisted this application by filing their say and WS at xh.19. The defendants have denied the entire contention made by the plaintiff in his application as well as in his suit except the defendant No.1 is legal owner and possessor of the suit property.

Brief facts of the reply of the defendants are as under :-

5. The defendants have contended that admittedly the agricultural landed property situated at village Phakale, Tal. Shirur, described in plaint para No.1 has been received from the State of Maharashtra to father of the defendant No.1. It requires to prior permission from alienating the suit property. The suit property came to the share of the defendant No.1 in view of compromise at Exh.62 in RCS No. 277/08 before Civil Judge, Jr. Division, Shirur, Dist. Pune. The defendants contended that in negotiation with the plaintiff, the plaintiff was agreed to purchase the suit property for consideration of Rs. 5,50,000/- per Acre. The area of suit property is 1 H 86 R. The defendant No.1 and his wife are the uneducated and illiterate, defendant Nos. 3 to 6 are very minimum educated. The plaintiff played fraud and obtained signatures of the defendants on registered agreement to sale deed dated 12/11/2013 when disclosing its contents to them. The plaintiff had given a cheque of Rs. 3,50,000/- to the defendant No.1 and he was assured that he will pay Rs. 2 Lakhs within 8 days. Thereafter, the defendants came to know that the plaintiff played fraud on them and it has mentioned in the agreement to sale

deed that total consideration of entire suit land is Rs. 5,50,000/- and the plaintiff had given total amount to the defendant No.1 of Rs. 5,50,000/-. In actual facts, the price of suit land decided Rs. 5,50,000/- per Acre. Therefore, the defendant No.1 made his objection before the District Collector.

6. Defendant No.1 was agreed to sell the suit property for total consideration of Rs. 5,50,000/-. The plaintiff obtained signatures of the defendants on agreement to sale deed dated 12/11/2013 without disclosing the contents of the said agreement and the plaintiff played fraud on the defendants. The market value of the present suit property is around Rs. 25 Lakhs per Acre. On the basis of bogus and false agreement to sale deed dated 12/11/2013, the plaintiff has filed this false application and false suit against the plaintiff. On these grounds, the defendants have requested that the present application of the plaintiff is liable to be dismissed with cost.

7. Following are the points for my determination and my findings thereon for the reasons as noted below :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings.</u>
1	Does the plaintiff prove his prima facie case?	-- In the affirmative.
2	Does the plaintiff prove that balance of convenience lies in his favour ?	-- In the affirmative.
3	Who will suffer irreparable loss, if the injunction is granted or refused ?	---The plaintiff, if injunction is refused.
4	What order ?	--As per final order.

REASONS

8. In support of the contention of the plaintiff, he filed his

affidavit at Exh.6. In support of the reply of the defendants, the defendant No.1 has filed his affidavit on oath at Exh.20. In support of the contention, the plaintiff has produced documentary evidence under list of document at Exh.3.

As to Point Nos. 1 to 3 :-

9. Read the present application of the plaintiff and reply of the defendants at Exh.19. Heard the argument advanced on behalf of both the sides. Perused the record. It is the contention of the plaintiff that on 12/11/2013 the defendant No.1 executed agreement to sale deed in respect of the suit property in his favour for total consideration of Rs. 5,50,000/-. The said agreement to sale deed registered before Sub-Registrar office, Class I, Shirur bearing document No. 6030/2013. The defendant Nos. 2 to 6 consented to the said registered agreement dated 12/11/2013. The plaintiff had given total consideration of Rs. 5,50,000/- to the defendant No.1 on the same day of registration of agreement to sale deed dated 12/11/2013. It was agreed in between the parties that on the day of registration of the sale deed in respect of the suit property, defendants will deliver possession of the suit property to the plaintiff. The defendant No.1 sought the prior permission from the District Collector for alienating the suit property due to the suit property is the property of new sharth. The defendant No.1 was also agreed to get measured the suit land from Government office. After receiving permission from the Collector, and measurement of the suit land thereafter within two months the defendant No.1 will execute registered sale deed in respect of the suit property in favour of the plaintiff.

10. It appears from the contention of the defendants that the

plaintiff was agreed to purchase the suit property for Rs. 5,50,000/- per Acre. The area of suit property is 1H 86 R. The plaintiff played fraud on the defendants and without disclosing the contents of the agreement to sale deed dated 12/11/2013 he obtained signatures of the defendants on the said agreement to sale deed. Thereafter, defendant No.1 came to know that the plaintiff has played fraud on them by mentioning the total price of the suit property is Rs. 5,50,000/-. The defendant No.1 also came to know that it has mentioned in the agreement to sale deed that the defendants had received entire total consideration of Rs. 5,50,000/-, however, it was agreed in between the plaintiff and defendant No.1 that the price of per Acre has fixed on Rs. 5,50,000/-.

11. According to the plaintiff, the defendant No.1 was agreed to sale the suit property area 1H 86R for total consideration of Rs. 5,50,000/- to the plaintiff. The plaintiff had given entire total consideration of Rs. 5,50,000/- to the defendant No.1 on the day of agreement to sale deed dated 12/11/2013. This fact has been denied by the defendants and according to the defendants price fixed Rs.5,50,000/- per Acre and not entire suit property i.e. 1 H 86R. Such material dispute in between the parties can be ascertained after adducing evidence of both the sides. At present it requires to see whether there is agreement in between the plaintiff and defendants dated 12/11/2013 is in existence or not. The plaintiff produced document under list of document at Exh.3. At Sr. No.1 under list of document at Exh.3 there is registered agreement dated 12/11/2013 in respect of the suit property in between plaintiff and defendant No.1. The defendant Nos. 2 to 6 also put their signatures as consenting party to the said agreement to sale deed. Till this date, the said agreement to

sale deed dated 12/11/2013 has not cancelled on behalf of the defendants. Therefore, the said agreement is in existence. Admittedly, the defendants have refused to execute registered sale deed in respect of the suit property in favour of the plaintiff. Therefore, certainly it is an apprehension in the mind of the plaintiff that the defendants will create third party interest in the suit property.

12. From the above my discussion, I come to the conclusion that the plaintiff has proved prima facie case, balance of convenience is also lying in favour of the plaintiff, if this application is not allowed in favour of the plaintiff, then certainly the defendants will create third party interest in the suit property. Therefore, I answer point Nos. 1 to 3 in the affirmative. Hence, I proceed to pass the following order :-

ORDER

- 1] The application of the plaintiff at Exh.5 is hereby allowed.
- 2] The defendant Nos. 1 to 6 are hereby temporarily restrained from creating third party interest in the suit property till final disposal of the main suit.
- 3] Costs in cause.

Dt.:-28/11/2017
Pune

sd/--
[R.V. Kokare]
Civil Judge Sr. Division, Pune.

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I affirm that the contents of this P. D.F file judgment/Order are same, word to word, as per the original judgment/Order.

Name of the Stenographer	Mrs. J.S. Tembre
Name of the Court	Mr. R.V. Kokare, C.J.S.D., Pune
Date of Judgment	28/11/2017
Judgment signed by the P.O on	29/11/2017
Judgment uploaded on	15/12/2017

