

ORDER BELOW EXH. 05

This is an application for temporary injunction under Order 39 Rule 1 and 2 of Code of Civil Procedure.

Facts of the plaintiff's case in brief are as follows :

2] The plaintiff through her husband, the power of attorney holder, has filed the present suit for Specific Performance of Contract and Permanent Injunction. The land Gut No. 3, Khata No. 99, mutation No. 730, ad-measuring 0H. 62 R. situated at mouza Mubarakgaon (Belora), Pragane Tq. Chandur Bazar, Dist. Amravati is the subject matter of the suit (Herein after referred as 'the suit field'). The defendant agreed to sale the suit field to the plaintiff for consideration of Rs. 13,50,000/- by executing agreement of sale on 05/10/2015. Accordingly, the plaintiff paid Rs. 6,75,000/- in cash towards the sale consideration and defendant acknowledge the same. The sale deed was agreed to be executed on or before 30/08/2016 after making the necessary compliance as agreed by the defendant. The sale agreement dated 05/10/2015 was duly notarized with necessary documents. However, the defendants have not complied the condition as agreed. Hence, the plaintiff called upon the defendant to make said compliance before 30/08/2016.

3] It is further contention of the plaintiff that the plaintiff was, is and will always remain ready and willing to perform his part of contract. However, in the last week of August 2016, the defendant could not make necessary compliance and asked for extension of time for execution of sale deed. Accordingly time was extended upto

31/01/2017. Then again on the request of the defendant, the said time was extended upto 31/05/2020. That from February 2017, till the end of 2019, the plaintiff followed the defendant for execution of sale deed but he did not pay any heed to his request.

4] It is the further contention of the plaintiff that from 23/03/2020, there was COVID-19 pandemic situation throughout the world and under the pretext of the said situation, he could not pursue the defendant upto 28/02/2022. Then from March 2022, he is continuously in touch with defendant but the defendant is prolonging the matter. He then suspected foul play and made enquiry at Belora upon which it reveals that in the last week of September 2022, the defendant is trying to create third party interest in the suit field and also searing for person who can enter into joint venture agreement with defendant for the purpose of making layout of the suit field and sell the same. Hence, the plaintiff is constrained to file the present suit and by filing the present application prayed to grant temporary injunction against the defendant restraining him from creating third party interest in the suit field and from changing the nature of the suit field by making layout and making construction.

5] The defendant filed his say at Exh. 14 and denied the contentions of the application. According to him, no such transaction has taken place between the plaintiff and him in respect of the suit field. Moreover, the plaintiff did not pay any money to the defendant on the date mentioned in the plaint as there is no bank documents in respect of those transactions. In the month of October 2015, the defendant was in need of amount of Rs. 75,000/- for the sake of

agricultural purpose. Therefore, he demanded said amount to the plaintiff and thereafter he executed nominal agreement to sale in respect of suit land for the security of amount of Rs. 75,000/-.

6] It is further contention of the defendant that he repaid the said amount to the plaintiff in the month of August 2016. He never handed over possession of the suit field to the defendant by any registered documents. After repaying that the said amount he made several requests to the plaintiff to cancel or return back the agreement to sale dated 05/10/2015 but the plaintiff did not return the same. The said agreement is nominal one as it is not registered as per the provision of law. However, the plaintiff threatened the defendant to file false suit against him on the basis of said agreement. Further the plaintiff on several occasion tampered the said agreement by way of overwriting on it on 31/01/2017 and 31/05/2020.

7] It is further contention of the defendant that the plaintiff never sent any notice in respect of the said agreement and never claimed the suit field within stipulated period. Hence, the present suit is barred by limitation. Further, the plaintiff never paid Rs. 6,75,000/- to the defendant by any recognized transaction. Moreover, there is no documents to show that plaintiff paid the said amount in cash to him. According to him, the suit field is only the source of his livelihood and therefore question of creating third party interest does not arise. The plaintiff has filed this application only with intent to dispossess the defendant from the suit field. As the present suit is barred by limitation and not tenable in the eye of law deserves to be dismissed with cost. Hence, he prayed to reject the application.

8] On the basis of rival pleadings, following points arise for determination, and my findings with reasons thereon are as follows :

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff has made out prima facie case ?	Yes.
2.	Whether the plaintiff will suffer irreparable loss ?	Yes.
3.	Whether balance of convenience lies in favour of the plaintiff ?	Yes.
4.	What order ?	Application is allowed.

REASONS

AS TO POINT NO.1 TO 3:-

9] All above points are interlinked with each other. Hence, I have decided them together. Perused the record and documents filed thereon. Heard learned advocate for the plaintiff as well as defendants.

10] Record shows that the plaintiff has filed the present suit for Specific Performance of Contract and Permanent Injunction. Before going into the disputed fact, it is necessary to bring on record the admitted facts. The execution of agreement to sale of the suit field on 05/10/2015 between the parties is not disputed. According to the defendant, the agreement was executed for nominal purpose. The said agreement is not registered and notarized documents is also not disputed. Whether the said agreement requires registration or not, what will be the consequences of non registration of any documents would be decided at the time of final hearing. While deciding temporary

injunction application, the court has to see only prima facie case and it is not expected to the court to go into the merit of the case.

11] From the above admitted facts and from the contentions of the both parties, it reveals that agreement to sale dated 05/10/2015, in respect of suit field was executed between the plaintiff and the defendant. The copy of agreement to sale dated 05/10/2015 is filed by the plaintiff on record along with list of documents Exh. 4. On perusal of the same, it reveals that the defendant agreed to sale suit land to the plaintiff for the consideration amount of Rs. 50,000/- and it was further agreed to execute sale deed till 30/08/2016. The endorsement regarding extension of time till 31/01/2017 and thereafter till 31/05/2020 appears on the said notarized agreement to sale. Thus, the documents on record also support the contention of the plaintiff.

12] As stated earlier, whether the said agreement to sale is executed only for nominal purpose or for the security of amount of Rs. 75,000/- taken by the defendant from the plaintiff is part of evidence and that will be decided at the end of the trial. Further, it is admitted that the possession of the suit field is with the defendant. The plaintiff is merely seeking specific performance of the said agreement. Moreover, whether the suit is barred by limitation or tenable in the eye of law is also a part of evidence. Hence, at this stage, those contentions cannot be taken into consideration.

13] The pleadings of the both parties and documents on the record, show that the plaintiff has prima facie proved the fact that the defendant executed agreement to sale in respect of suit field in favour

of plaintiff and it was agreed to execute sale deed after making necessary compliance. As the defendant failed to comply the same, the plaintiff has filed the present suit. Thus, prima facie case is in favour of the plaintiff. It is the contention of the plaintiff that on making enquiry he came to know that in the last week of September 2022 the defendant is trying to create third party interest in the suit field and also making layout of the suit field for selling the same. However the defendant has denied the same stating that the suit field is only source of livelihood and hence question of selling the same does not arise. As possession of the suit field is with defendant and till the date he has not executed sale deed in favour of plaintiff, chances of creating third party interest to take away the right of the plaintiff cannot be ruled out. Hence, it is necessary to restrain the defendant from creating third party interest in the suit field and also making changes in the suit field.

14] Thus, considering the above discussion and documents on record, it is proved that the plaintiff has made out prima facie case for granting injunction against the defendant. If injunction is not granted to the plaintiffs, he/she would not suffer irreparable loss as prima facie it reveals that he/she has paid part of the consideration amount. On the other hand, if the injunction is granted, no prejudice or any loss will be caused to the defendant as he is in possession of the suit field. Hence, the balance of convenience lies in favour of the plaintiff. As such, I answer point No. 1 to 3 in positive.

AS TO POINT No.4 :

15] In view of answer to point No. 1 to 3, the plaintiff has proved all the three ingredients for granting temporary injunction in

his/her favor. Hence, he/she is entitled for any injunction as prayed for. Considering findings of points No. 1 to 3, in answer to point No. 4, I pass following order:-

ORDER

- 1] The application is allowed.
- 2] The defendant is hereby restrained by way of temporary injunction from creating third party interest in the suit field and further restrained from changing the nature of the suit field by making layout or construction if any till the decision of the suit.
- 3] Costs in main cause.

Place: Achalpur
Date : 20/01/2023.

(Sarita R. Bhor)
2nd Jt. Civil Judge (Sr.Dn.), Achalpur.