

MHST010031332022



Presented on : 19.10.2022
Registered on : 01.11.2022
Decided on : 04.08.2026
Duration : Ys Ms Ds
03 09 03

IN THE COURT OF DISTRICT JUDGE - 1, SATARA

AT : SATARA

(Presided Over by Shri Amit M. Shete)

MISC. CIVIL APPEAL NO. 238 / 2022

EXH. No.

Mr. Salim Abdulraheman Kachi

Age :- 57 yrs., Occu. :- Business

R/o at 25, Gulmohar colony,
Shahupuri, Tal. & Dist.Satara

APPELLANT
(Plaintiff)

Versus

- 1) **M/s Aney Developers,**
through its Partners,
 - a) **Shankar Ramchandra Lokhande**
Age :- 45 yrs., Occu. :- Business
 - b) **Vinayak Eknath Dhanwade**
Age :- 41 yrs., Occu. :- Business
both r/o Vijaynagar Housing
Society, Khed, Sadar bazar, Satara
- 2) **Jankalyan Nagari Co-op. Patsanstha**
Ltd., Karad, through its Branch
Manager Satara, Rajdhani Towers,
Opposite Panchpali Houd, Satara

3) **Ass. Deputy Registrar Class II, RESPONDENTS**
Satara-2, Balvikas Bhavan, Godoli, (Defendants)
Satara

Appeal under Order XLIII Rule 1 of The Code of Civil
Procedure Code, 1908.

Appearances:

Ld. Adv. Mr. D.Y. Mutalik, for the appellant.

Ld. Adv. Mr. R.S. Bahulekar, for the respondents

: J U D G M E N T :

(Delivered on this 4th day of August, 2026)

1. Feeling aggrieved and dissatisfied by the impugned order dated 03.10.2022 passed by the learned 8th Jt.Civil Judge J.D., Satara below Exh.5 in Regular Civil Suit No.34 of 2022, the appellant (plaintiff) filed present appeal. By the impugned order, the learned Trial Court was pleased to partly allow the T.I. application. (The parties are hereby referred as per their original nomenclature before the learned Trial Court).

2. Few and only relevant facts needs to be mentioned here that the suit is essentially filed in respect of power of attorney and development agreement dt.16.12.2017 duly executed inter se between the plaintiff and defendant no.1. Under the said development agreement, the suit property i.e. plot no.13 admeasuring 48 sq.mtr. out of C.S.No.505A/13 situated at Mangalwar peth was belonging to the plaintiff. The defendant

no.1 and plaintiff entered into development agreement. As against the development over the suit property, the defendant no.1 agreed to give constructed 4 shops and 8 flats to the plaintiff. The time scheduled was fixed under the development agreement which later on got extended under mutual consent of the parties. The defendant no.1 failed to perform his part of contract thereby leading to file present suit seeking cancellation of power of attorney executed in favour of defendant no.1 and for the consequential relief of injunction i.e. not to create third party rights in respect of the construction / development carried out over the suit property. Pending the suit, the temporary injunction application came to be filed to restrain the defendants from creating third party rights.

3. The defendant appeared and by filing written statement (Exh.21) strongly opposed the suit as well as application. The defendant not refused the obligation of giving 4 shops and 8 flats to the plaintiff. The defendant contended that after the development agreement, the parties again extended the time scheduled. The plaintiff is required to pay Rs.23,60,000/- as per letter dt.23.10.2021. Thus, the defendant prayed for rejection of the application.

4. The learned Trial Court after hearing the respective parties and perusing the documents on record, by its impugned order was pleased to partly allow the T.I. application. Thus, present appeal.

5. Gone through the appeal and documents on record. Following points arose for my determination and the same are answered accordingly for the reasons noted below:-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the learned Trial Court erred while partly allowing the T.I. application warranting interference?	No.
2.	What order ?	.. As per final order.

: REASONS :

6. It has been contended that the learned Trial Court erred while partly allowing the T.I. application by merely describing the flats and shops of which plaintiff is entitled instead of the actual flats and shops in the development so carried out. The learned Trial Court failed to consider that the plaintiff has cancelled the power of attorney executed in favour of the defendant no.1. In case of cancellation, the defendant no.1 is not authorized to create third party rights in respect of developed property. The development agreement and its terms and conditions are not disputed. The defendant no.1 failed to perform his part of the contract and therefore, it is the plaintiff who would suffer greater monetary loss causing irreparable loss. The learned Trial Court has committed error while partly allowing the T.I. application that too on the submissions of the defendant no.2 finance institute against which no relief was

sought. Thus, it is contended that the learned Trial Court considering the facts and material on record, ought to have granted the T.I. application in its entirety.

As to Point Nos.1 to 2 :

7. From the material on record, the fact of execution of development agreement dt.16.12.2017 along with the power of attorney is not disputed. It is also not disputed that in development agreement, the period was mentioned of 20 months for the completion of development. However, the development could not be completed in given time and therefore, the plaintiff and defendant no.1 by mutual agreement dt.29.03.2019 extended the earlier period of 20 months to 32 months. Under the subject development agreement, the defendant no.1 agreed to give 4 shops and 8 flats to the plaintiff as and by way of consideration. These facts are not disputed by either party.

8. By keeping in mind the admitted facts, now let us see the rival pleadings of the plaintiff and defendant no.1. As per the plaintiff, the defendant no.1 is not performing its part of contract and therefore, sought the cancellation of power of attorney and injunction to restrain the defendant no.1 from creating third party rights in the developed / construction so carried out over the suit property. The defendant no.1 appeared and by filing written statement admitted the claim of plaintiff to the extent of 4 shops and 8 flats. Thus, the dispute to the extent of plaintiff's right in the suit property can be said to be secured.

9. The defendant no.1 has claimed an amount of Rs.23,60,000/- as per the demand letter dt.23.10.2021. It seems that the dispute revolves around the said cash of Rs.23,60,000/-. The defendant no.1, during the course of hearing of T.I. application produced the agreements which were executed in favour of third parties in respect of constructed flats and shops over the suit property. Those agreements are prior to filing of the suit. Thus, the third party rights, in respect of some flats and shops have already been created. So far the claim of the plaintiff is concerned, the learned Trial Court while partly allowing the T.I. application, restrained the defendant no.1 from creating any third party rights in respect of the shops and flats mentioned in the operative part of the impugned order. Thus, it is apparent that the interest of the plaintiff has already been secured and therefore, there would be no monetary loss of the plaintiff in case the defendant no.1 creates further third party rights in respect of flats and shops so developed over the suit property.

10. It is pertinent to note that the learned Trial Court by impugned order dt.03.10.2022, restrained the defendant no.1 from creating third party rights in respect of the flats and shops mentioned in the order. The plaintiff challenged the said order by preferring present appeal on 19.10.2022. Pending the appeal, there was no interim, ad interim relief running in favour of the plaintiff. Thus, the order impugned is in force till date from 03.10.2022. That apart, as per the CIS, the status of the suit shows that the same is for hearing and on the stage of evidence

of the defendant. Thus, it can be inferred that the evidence of plaintiff has been over. The same indicates that the stage of T.I. application has already been over. Thus, considering the entire peculiar facts, more particularly secured interest of the plaintiff, in my view, the learned Trial Court committed no error while partly allowing the T.I. application. The plaintiff failed to make out any ground so as to cause interference. The plaintiff even failed to make out any prima facie ground and thus, I answer the points accordingly and pass the following order :-

: ORDER :

1. The appeal is dismissed with costs in cause.
2. The impugned order dated 03.10.2022 passed by the learned 8th Jt.Civil Judge J.D., Satara below Exh.5 in Regular Civil Suit No.34 of 2022, stands confirmed.
3. Pending applications, if any, stand disposed off.
4. Issue memorandum accordingly.

SATARA.
Dt.11.03.2026

(Amit M. Shete)
District Judge-1, SATARA.