

ORDER BELOW EXH.5
SPECIAL CIVIL SUIT NO.598/2015

1. The plaintiff has filed this application under Order 39 Rule 1 and 2 of Civil Procedure Code for temporary injunction thereby restraining the defendants from selling, assigning, transferring the right, title and interest in the suit property to the third person till final disposal of the suit.

Brief facts of the plaintiff's case are that :

2. Defendant Nos.1 to 3 are the owner of the suit property comprising of three different survey numbers. Defendant No.4 is Power of Attorney of defendant Nos.1 to 3. The plaintiff stated that, defendant Nos.1 to 3 are residents of Solapur and property is situated at Pune district. Due to erroneous order of Revenue Department, name of defendant Nos.1 to 3 removed from revenue record and name of one Kewate is inserted as an owner of the suit property. Thus plaintiff has to file legal proceeding to remove the name of one Kewate and taken their name on revenue record as an owner of suit property. For that purpose, defendant Nos.1 to 3 not being able to initiate legal proceeding and persuasion of the legal proceeding, they appointed defendant No.4 by executing registered Power of Attorney, authorised him to deal with the suit property in all respect including transfer of suit property to third person.

3. The plaintiff stated that, all defendants facing lot of

problems for getting clear and marketable title in respect of the suit property. Hence, defendants agreed to sale suit property to the plaintiff and accordingly on 18/12/2001, defendants executed agreement of sale of the suit property in favour of plaintiff for total consideration of Rs.17,00,000/-. This agreement was signed by the defendant No.4 as the Power of Attorney holder of defendant Nos.1 to 3. Defendants received Rs.5,00,000/- from the plaintiff towards part consideration. As per the term of agreement, defendants were under obligation to clear the title of the suit property in all respect.

4. Plaintiff stated that, she was ready and willing to perform her part of contract. She even has made further payment of Rs.5,00,000/- and Rs.4,00,000/- to the defendants. Plaintiff stated that, defendants demanded an amount of Rs.50,00,000/- as additional sale consideration of the suit property. The defendants also stated that, they have proposals from other persons for purchase of the suit property on higher rate. The plaintiff stated that, defendants has flatly refused to execute the sale deed in favour of the plaintiff and they are intended to sale the suit property to third person, hence she filed this suit along with temporary injunction application.

5. Defendant Nos.1 and 3 strongly opposed the application by filing reply at Exh.42. By filing pursis at Exh.33, it is informed to the Court that, defendant No.2 has expired before filing this suit. Defendant No.4 appeared in the proceeding but

failed to file reply. Defendant Nos.1 and 3 stated that, they had executed the Power of Attorney in favour of defendant No.4. It was without consideration and it was unregistered. However, they denied that, the defendant No.4 was authorised by the Power of Attorney to sale the suit land. They denied the execution of agreement of sale in favour of plaintiff. They further stated that, they have no knowledge about the alleged agreement stated to have been executed by the defendant No.4 in favour of plaintiff. They stated that, plaintiff and defendant No.4 in collusion with each other filed this suit to grab the property of the plaintiff. They stated that, they have cancelled the Power of Attorney. Hence, prayed for rejection of this application.

6. After considering the rival contentions raised by the parties, following points are formulated for my consideration.

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiff has made out an prima facie case for grant of temporary injunction as prayed?	In the Negative.
2	Whether the balance of convenience lies in her favour?	In the Negative.
3	Whether she will be put to irreparable loss and injury if temporary injunction is not granted?	In the Negative.
4	What Order?	As per final order

REASONS

AS TO POINT NOS.1 TO 4 :

7. Heard learned counsel on behalf of the parties. Perused the record of the case.

8. The suit for specific performance is filed on the basis of agreement dated 18/12/2001. The agreement executed on behalf of the defendant Nos.1 to 3. The agreement does not bears the signature of defendant Nos.1 to 3. the document of Power of Attorney appears to have been executed in favour of defendant No.4 by defendant Nos.1 to 3. Defendants accepted the execution of Power of Attorney. The said Power of Attorney is not registered document, it is only authenticated by the Sub Registrar. The defendant Nos.1 and 3 revoked the the Power of Attorney by public notice dated 19/08/2015.

9. The revenue record filed by the plaintiff on record disclosed that, though the revenue authority has passed the order in favour of the defendants for mutation of their names in revenue record, still 7/12 extract disclosed that, their names have not been mutated in 7/12 extract.

10. The said agreement is executed in the year 2001. Plaintiff has filed this suit in the year 2015. It is the case of the plaintiff that, she has paid major consideration amount to the defendant No.4. The plaintiff also claimed that, she was put in possession of the suit property on the date of agreement. Plaintiff is claiming injunction restraining the defendants from creating

third party interest. So far as granting temporary injunction is concerned, the plaintiff must have come with the clean hands. Here in this case, though time is not the essence of the contract, the plaintiff has not approach within reasonable time. Moreover, delay of filing the suit is created question mark about the ready and willingness on part of plaintiff.

11. Hon'ble Supreme Court in the case of Manjunath Anandappa V/s. Tammanasa and others AIR 2003 Supreme Court 1391 held that, "the suit filed almost after six years after entering into an agreement to sale. Time though not essence of the contract, the plaintiff has to approach the Court within reasonable time. Having regard to conduct of the plaintiff the discretionary relief refused by lower Courts is proper."

12. Considering the conduct of the plaintiff in this case, I am of the opinion that, plaintiff failed to make out prima facie case and balance of convenience in her favour. No irreparable loss will be caused to the plaintiff, if the temporary injunction as sought by the plaintiff is not granted. Hence, I answer point Nos.1 to 3 in the Negative and proceed to pass the following order :

ORDER

Application for temporary injunction (Exh.5) is hereby rejected.

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Date : 08/10/2015

[S.S. Gulhane]
Civil Judge Senior Division, Pune.

Spl. Civil Suit No.598/2015
Mrs. Lata B. Gogawale
Versus
Vinayak H. Dhadphale & Ors.

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I affirm that the contents of this PDF file Order are same word for word as per Original Order.

Name of Steno	:	Abhishek A. Gite. [Lower Grade Steno]
Court Name	:	S.S. Gulhane Civil Judge Senior Division, Pune.
Date of Order	:	08/10/2015
Order signed by Presiding Officer	:	08/10/2015
Order Uploaded on	:	28/10/2015