

**ORDER BELOW Exh.5****(Date : 14/06/2022)**

This is an application filed under O. 39 R 1 and 2 r/w Section 151 of Code of Civil Procedure, for grant of temporary injunction against defendant from restraining him to create the third party interest in the suit property till disposal of the suit.

2. The subject matter of suit property is Gut no.623, ad-measuring 0.81 R, occupancy Class-I, Akar Rs.4.57, situated at mouza – Ashti, Tq.Bhatkuli, Distt.Amravati, bounded with Towards East: Field of Rambhau Dawale, Towards West : Virhsi village Road, Towards North: Nala and Towards South: Filed of Jagdish Shingade.

3. Plaintiff is contended that defendant is daughter of one Hiralal Shingade. Suit property has been mutated in her and his sister Chandrakala Urate as owner in 7/12 extract of suit property. Defendant agreed to sell the suit property to plaintiff and her sister is also agreed to sell her share 0.81 R out of her 4 acre land of field Gat no.623, with total consideration of Rs.4,20,000 and Rs.2,10,000/- each. Defendant and her sister Chandrakala jointly executed agreement to sell in favour of plaintiff on 27.05.2008. Plaintiff has paid Rs.3,20,000/- as earnest amount to defendant and her sister Chandrakala. Out of Rs.3,20,000/- Rs. 1,60,000/- had been given to defendant on 27.05.2008 and remaining Rs.1,60,000/- was agreed to be paid to defendant and her sister at the time of execution of sale deed of their respective land and the possession of suit field was handed over to the plaintiff by defendant. There was name on Gut

no.623 as tenant in the column of “other rights”. Hence, without deleting name of that person, concerned revenue authority could not have been executed the sale deed. By the order of Tahsildar on dt.15.06.2020 the name of Surdhin Joshi was deleted from 7/12 extract. In year 2009 plaintiff paid of Rs.50,000/- as per the need and request of the defendant. After receiving certified copy of the order of Tahsildar on 27/09/2021, plaintiff asked to the defendant and her sister about the execution of the sale deed as per agreement dt.27/05/2008. Sister of defendant Chandrakala has executed sale deed of her 2 Acres land as per above agreement on 24/12/2021. However, defendant refused to execute the sale deed of her part. In-spit of executing the sale deed in favor of plaintiff, defendant is threatening to the plaintiff of creating third party interest in the suit property. Hence, plaintiff preferred this application to restrain the defendant from creating third party interest over suit property. In case injunction as sought is not granted in his favour of plaintiff then irreparable loss will be caused to him which can not calculated in terms of money.

4. Defendant resisted the application by filing written-statement (Exh.12) and reply (Exh.13) to the application. According to her, plaintiff is having the money lending business. In the year 2009 defendant was in need money of Rs.60,000/-. Plaintiff has paid to her Rs.60,000/- with interest of 20% per annum and demanded documents of land. Plaintiff obtained signature on the blank papers. Defendant has supplied documents of the suit property to the plaintiff as security purpose of loan transaction. She further submitted that he never entered into the agreement and never received any amount

from the plaintiff for the purpose of consideration. Defendant has received the loan amount of Rs.60,000/- and she is ready to repaid the same to the plaintiff. On May 2009, defendant has paid Rs.60,000/- with interest of Rs.4000/-. But the plaintiff is taking undue advantages of the signature on the blank documents. She submitted that suit is not well within the limitation and not tenable in the eyes of law. The suit is filed on the false cause of action. He has no prima-facie case. Balance of convenience is not in favour of plaintiff. If interim relief is granted to plaintiff, then irreparable loss will be caused to the defendant. On the contrary, no loss will be caused a plaintiff. Accordingly, defendant prayed for rejecting the application of plaintiff.

5. Taking into consideration these three fundamental conditions, I frame the following points with findings thereon for reasons as under:

Sr.No.	Points	Findings
1.	Whether the plaintiff/applicant has made out prima-facie case ?	Affirmative.
2.	Is plaintiff/applicant has balance of convenience lies in his favour ?	Affirmative.
3.	To whom irreparable loss will be caused, if injunction as sought by plaintiff /applicant is not granted ?	To plaintiff.
4.	Is plaintiff/applicant entitled to interim relief as prayed for ?	Yes.
5.	What order ?	As per final order.

REASONS

As to point no.1 :-

6. Plaintiff has produced on record, Isar pavti Lekh,

affidavit by defendant to Talsildar, Bhatkuli, order of Tahsildar, 7/12 extract of Gut no.623, copy of notice and postal receipt. Defendant has not filed any documents on record.

7. According to plaintiff, defendant executed agreement to sell on 27/05/2008 jointly with Chandrakla Ukate and defendant for 0.81 R of Gut no.623 by swearing that after grant of permission by Tahsildar, Bhatkuli by removing name of tenant Surdhin Joshi. On condition and as per order passed by Tahsildar on 15/06/2020, defendant did not turn up for sale deed. In-spite of preparing sale deed, defendant is intended to create third party interest. Plaintiff is in possession of the suit property. Hence, if defendant create third party interest, it will caused loss to the plaintiff. Plaintiff has relied on *S. Kaladevi vs V.R. Somasundaram & Ors. 12 April 2010*. It is held by Hon'ble Apex Court, the admissibility of an unregistered sale deed in a suit for specific performance of the contract. The facts of the cited authority are differ from the facts of case in hand. Hence, with due respect of the authority the same is not needful to the plaintiff at this state. He further relied on *Harish Bulchand Tejawani Vs Nandlal Hakikatri Motwani, 2016(1) ALL MR 127*. It is held by the Honble High Court that interim injunction can be granted, irrespective of section 52 of T.P. Act begin in operation, to restrain from creating third party interest in suit property pending disposal of suit. Plaintiff has prayed the same prayer in the application. Hence, it is needful to the plaintiff.

8. Looking to the nature of the case of the plaintiff, he has filed Isar pavti Lekh which prima facie appears the transaction was occurred between plaintiff, defendant and her sister. Affidavit was

executed by defendant at Talsildar, Bhatkuli office is filed by the plaintiff, also prima-facie appears that defendant was under oath to make sale deed in favor of plaintiff after the condition in the agreement to sell. Plaintiff filed order of Tahsildar dt.15/06/2020, which is also appears that the name of *Kul* has been removed by the said order. Documents filed by the plaintiff prima-facie appears the transaction between both the parties and plaintiff is in possession of the suit property from the date of agreement to sell. Contention of the defendant could not decide at this stage without adducing evidence of both the parties at length.

9. I have already discussed above that documentary evidence produced on record show that plaintiff is in possession of suit property. According to the plaintiff, defendant is intended to alienate the suit property and to create third party interest in the suit property. Plaintiff being in possession of suit property, he has a right to enjoy the same without obstruction and any other right. Plaintiff has not filed any documents which shows that defendant is trying to create third interest, but he is in possession of the suit property and being apprehended, he has filed the present application. Hence, his possession on the suit property needs to be protected till disposal of the suit. Authority cited *Harish (supra)* is applicable to the contention of the plaintiff. Thus, the plaintiff is having a prima-facie case to go to trial. Hence, I record my findings as to point no.1 in affirmative.

As to point nos.2 to 4 :-

10. Prima-facie, it appears that legal right is vested in plaintiff and defendant is trying to violate his legal right. Hence, irreparable loss will be caused to plaintiff if defendant is not

restrained from doing so. Prima-facie case, balance of convenience and irreparable loss are the terms which are cumulative to each others. Hence, I record my findings as to point nos.2 and 4 in affirmative and point nos.3 accordingly. Hence, the following order.

ORDER

1.	Application Exh.05 is hereby allowed.
2.	Defendant is hereby restrained by way of temporary injunction from creating third party interest in the suit property till final disposal of suit.
3.	No order as to costs.

Date:14/06/2022.

(Seema A. Ladse)
Civil Judge, (Jr.Dn.)
Bhatkuli, Distt.Amravati.

Certified that PDF copy of Order supra is word-to-word identical to the original Order.

Name of Stenographer: U.P. Chendke

Dictated on : 14.06.2022

Checked on : 14.06.2022

Signed on : 14.06.2022

Uploaded on : 18.06.2022