



ABHIJEET S. MORE

Vs.

SUMAN S. SANKPAL AND ORS

ORDER BELOW EXH. 5

This is application is made for restraining defendants from alienating suit property No. 1B and 1C (i.e., shop No. 6 and 4) till final decision of the suit.

02. The plaintiff's case is that the suit property (plaint para 1) was agreed to sell by deceased Shashikant Narayan Sankpal as per notarized agreement dated 09.12.2013. At the time of agreement, Rs. 3.5 lakhs were paid by the plaintiff. At the same time, deceased Shashikant Sankpal has given possession of both the shops to the plaintiff. The plaintiff also deposited amount of loan in the name of the deceased Shashikant Sankpal to the tune of Rs. 3.5 lakhs. In short, amount of Rs. 7 lakhs was paid to the vendor as above and subsequent Rs. 7 lakhs was paid to him from time to time. Accordingly, entire amount of Rs. 14 lakhs was given to the deceased in pursuance of the transaction of agreement to sell.

03. After the transaction, the plaintiff had given to both shops on rent and he was paid its taxes also. However, after payment of entire consideration he demanded execution of sale-deed from vendor Shashikant Sankpal. However, he assured that he will execute the sale-deed and plaintiff is need not to worry. Thereafter, he stated that he is intending to construct new building on the same place and therefore, he will give two shops (i.e., shop No. 6 and 4) in said new building and

then we will execute the sale-deed of new shops only. In pursuance said assurance deceased defendant were executed one memorandum understanding on stamp paper of Rs. 500/-.

04. In the meantime, Shashikant Sankpal was died and names of defendant No. 1 to 3 were entered into record of right. These defendants also agreed on 20.11.2021 to give two shops to the plaintiffs. Even, they also agreed to execute the sale-deed. They executed memorandum of understanding on 24.11.2021. The plaintiff had purchased stamp paper and in the document there was only mention of shop No. 6. The plaintiff objected to the same. However, under the pretext of completion of some formalities they insisted him to execute the document. However, they orally agreed to give shop No. 4 and 6. Subsequently they have denied to do so. Now, the defendants are trying to alienate both the shop to any third persons. Therefore, considering prima-facie case, balance of convenience and irreparable loss the plaintiff prayed to allow the application on the basis of his detail pleadings and documents.

05. Defendant No. 1, 2, 4 and 5 have denied the all adverse allegations. They denied the receipt of Rs. 14 lakhs as alleged. They admitted the agreement to the extent of shop No. 6. However, they denied the execution of any agreement either oral or written in respect of shop No. 4. The defendant accepted receipt of Rs. 3.50 lakhs at the time of agreement dated 09.12.2013 and amount of loan payment. However, subsequent payment by plaintiff are denied. The defendants have fairly submitted undertaking Exh. 39 about they will not alienate shop No. 6. Hence, for rest of prayers the defendant prayed to reject the application.

06. Heard both the side. They argued inconsonance of their respect application and say. The plaintiff has filed written notes of argument Exh. 34 which is inconsonance with the pleadings.

07. While deciding the application it would be just and proper to verify whether the plaintiff is having prima-facie, balance of convenience and irreparable loss in his favour. Prima-facie case does not mean the winning case but it is prima-facie triable case. Here, the defendant by submitting undertaking to the extent of shop No. 6 has lessened the scope of application. On the basis of undertaking Exh. 39 necessary order will be passed on the application to the extent of shop No. 6.

08. So far as shop No. 4 is concerned, there is no single document which can suggest prima-facie agreement to sell said shop No. 4. The document of notary dated 09.12.2013 is not in dispute. However, the matter revolving around the point of memorandum of understanding dated 09.12.2021. The plaintiff insisted to believe that there was agreement regarding shop No. 4 also. But the defendant emphasizes on contents of documents.

09. On perusal of document dated 09.12.2021, in the term at Sr.No. 6 there is clear mentioned about shop No. 6 only. Even, the plaintiff should not demand any other right except said shop is also clarified in the document. In that situation, said document is having more probative value than that of oral contention of the plaintiff. Other points of payment of consideration and agreement will be subject matter of trial. However, there is no prima-facie material to with hold shop No. 4 as prayed in the application.

10. Learned advocate for plaintiff submitted that if said shop is alienated then irreparable loss would cause to the plaintiff. However, the Court is of opinion that principle of lies pendency is also helpful to the plaintiff in such situation. However, for want of prima-facie case and balance of convenience the Court is not expected to grant the application. If in absence of any prima-facie material about shop No. 4 the injunction is granted, then the defendant will suffer irreparable loss. Therefore, for want of prima-facie case, balance of convenience and irreparable loss in favour of plaintiff the application can not be allowed as prayed in present circumstances. In view of undertaking Exh. 39, necessary order is going to be passed. Hence, following order :-

:- O R D E R :-

- 1) Application (Exh. 05) is partly allowed to the extent of undertaking Exh. 39.
- 2) Application is rejected to the extent of shop No. 4.
- 3) It is clarified that the parties to proceed with the matter expeditiously and make endeavor to decide it within three months.

sd/-

(G.D. Patil)

Date : 21.11.2024

9th Jt. Civil Judge Senior Division,
Satara.

:- Affirmation certificate :-

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

Name of the Stenographer :- A. N. Ombase, Steno Grade-3,

Name of the Court :- 9th Jt. Civil Judge Senior
Division, Satara. Dist. Satara.

Date of judgment/order :- 21.11.2024

Judgment/order signed by the
Presiding Officer on :- 22.11.2024

Date of judgment/order uploaded on :- 22.11.2024