

Order below Exh. 05 in R.C.S. No. 116/2022

(CNR-MHAH21-000560-2022)

The plaintiff has filed an application at Exh. 05 seeking the relief of temporary injunction restraining defendant Nos. 01 to 03 from alienating the suit properties in any way till decision of the suit.

The case of plaintiff, in short, can be stated as follows:-

02. The suit property is situated at Mauje Waki, Taluka Jamkhed, District Ahmednagar. The total area of agricultural land bearing Survey No. 10/2 is 2 hectares (In short 'H') 94 Ares (In short 'R'). Boundaries of the said property are as follows:

East	Shiv (Private land)
South	Survey No. 11
West	Survey No. 12
North	Survey No. 9

Within this survey No. 10/2 land admeasuring 100 R bounded as follows:-

East	Road
South	Remaining portion of Land out of survey No. 10/2 admeasuring 2 hectares 54 R
West	Survey No. 12
North	40 R land owned and purchased by the plaintiff

(The disputed property includes structures such

as a pipeline, cow-shed, farm-house, other materials, and is henceforth referred to as the “suit property.”)

03. The original area of Survey No. 10/2 was 2H 94R, owned by Sumanbai Tulshiram Sawant, mother of the defendants. She received the land from the Government under the Maharashtra Tenancy and Agricultural Lands Act, 1948, and held ownership rights under Section 43 of the said act.

04. The plaintiff, engaged in agriculture, owns land adjoining Survey No. 10/2 on its western side, forming part of Survey No. 12. Due to a relationship of trust, Sumanbai agreed to sell 40R land from Survey No. 10/2 to the plaintiff. After obtaining necessary permission from the Tehsildar, Jamkhed, under the Maharashtra Tenancy and Agricultural Lands Act, the sale was completed for Rs. 1,50,000/- through a registered sale deed (Registration No. JMK/1208/1-19/2015 dated 5th June 2015).

05. After the execution of the sale deed dated 5/6/2015, the plaintiff took possession of 40R land from Survey No. 10/2 and continues to hold it. The remaining 2 hectares 54R of Survey No. 10/2 remained with the deceased Sumanbai Tulshiram Sawant. At that time, land owned by Saraswati Ankush Gopalghare, the plaintiff's wife, was situated to the north of the plaintiff's property, making

their holdings adjoining.

06. Due to old age and health issues from January 2020, Sumanbai decided to sell 1H land from the remaining land to meet medical expenses. As the land was adjacent to the plaintiff's property, the plaintiff agreed to purchase it. Accordingly, meeting was held in February 2020 at the hospital in Kharda. The said meeting was attended by Sumanbai, the defendants, and two witnesses (Jagtap and Ashok alias Dilip Lohkare). The sale price was fixed at Rs. 8,00,000/-.

07. In pursuance of said agreement, the plaintiff has paid Rs. 1,00,000/- as advance, which was accepted by Sumanbai and Defendant No. 02. The plaintiff asked for a written document of the said transaction that time the defendants, contended that yet they have not obtained sanction for sale of property and assured the plaintiff that they will obtain sanction and allowed him to occupy the land.

08. Accordingly the plaintiff took possession of the suit property. He laid 115 PVC pipes for irrigation, and built a farmhouse. As the land is governed by Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, the defendants agreed to obtain permission and complete the sale on receiving Rs. 7,00,000/-. Defendants and Sumanbai

repeatedly assured the plaintiff that the sale deed would be executed after obtaining permission. The plaintiff was and is always ready and willing to pay the balance Rs. 7,00,000/-. Trusting the assurances of Sumanbai and the defendants, the plaintiff continued to seek completion of the transaction.

09. After death of Sumanbai on 12/11/2020, the property was inherited by Defendant Nos. 01 to 03 through Mutation Entry No. 3806, and is jointly recorded in their names. Therefore the plaintiff approached towards defendants for completion of transaction. That time the defendants contended that they had applied for permission/sanction.

10. The defendants promised to execute the sale deed after obtaining permission and updating the revenue records. Permission was granted on 27/1/2021, but only for 60R. After settlement discussions, the plaintiff agreed, and an additional amount of Rs. 2,00,000/- was transferred by the plaintiff on the request of defendant No. 02 to his account on 19/5/2021.

11. Thereafter, Defendant No. 01 applied for permission for remaining 40R land which was granted on 7/12/2021. The plaintiff has always been ready to pay the balance consideration amount to complete the agreed

transaction in respect of the suit property. However, despite repeated requests, the defendants have delayed execution of the sale deed by giving various excuses. On 01/03/2022, when the plaintiff again approached to pay the remaining amount of Rs. 5,00,000/- and asked for registration of the sale deed, the defendants postponed it, showing unwillingness to complete the transaction.

12. Therefore, on 15/3/2022, the plaintiff, through his Advocate, sent a notice informing the defendants that the plaintiff was ready to complete the agreed transaction. The defendants failed to appear at the Sub-Registrar's office on 16/4/2022 as promised and avoided completing the transaction. Despite multiple attempts by the plaintiff to contact the defendants, they continued to delay and gave false promises.

13. However, after further discussions, the defendants assured the plaintiff that the transaction would be completed on 20/5/2022, in front of witnesses. On that date, the plaintiff arrived with the remaining Rs. 5,00,000/- at the Sub-Registrar's office, but the defendants failed to execute the deed as promised.

14. When the plaintiff and witnesses contacted the defendants, Defendant No. 2 switched off his phone, and Defendant No. 3 refused to accept the payment, threatening

to sell the property to someone else. This has placed the plaintiff's legal rights at serious risk. If the defendants sell the suit property, the plaintiff will suffer irreparable loss. Hence this application.

15. The defendants failed to file their say within stipulated period, hence the application proceeded without their say.

16. Perused record and proceedings. Heard Learned Advocate for the plaintiff at considerable length and considered his submissions. Following points arise for my determination to which, I have recorded findings with reasons thereto.

Sr. No.	Points	Findings
1.	Whether the plaintiff proves <i>prima-facie</i> case?	Yes.
2.	Whether balance of convenience lies in favour of plaintiff?	Yes.
3.	Whether plaintiff will suffer irreparable loss in case of rejection of the application?	Yes.
4.	What order?	As per final order.

-: REASONS :-

POINTS NO. 01 TO 03 :-

17. Points No. 01 to 03 are interconnected with

each other therefore they are taken for the discussion together with view to avoid repetition of facts and evidence on record.

18. Before granting of the temporary injunction, the following Principles Governing Temporary Injunction are required to be satisfied:

(i) There is a *prima facie* case in favour of the plaintiff and against the defendant.

(ii) That irreparable injury is likely to be caused to the plaintiff which cannot be compensated for in terms of money.

(iii) That the balance of convenience lies in favour of the plaintiff and against the defendant.

(iv) The conduct of the plaintiff should be fair and honest.

19. In the given circumstances of the present case, it is evident that the proposal made on behalf of the defendants with respect to the sell of the land admeasuring 1H out of survey No. 10/2 situated at Mauje Waki, Tal. Jamkhed, Dist. Ahmednagar.

20. Due to old age and health issues, Sumanbai decided to sell 1 hectare of land in January 2020 to cover medical expenses. As the land was adjacent to the plaintiff's property, the plaintiff agreed to purchase it. In a meeting

held in February 2020 at the hospital in Kharda, attended by Sumanbai, the defendants, and two witnesses (Jagtap and Ashok alias Dilip Lohkare), the sale price was fixed at Rs. 8,00,000/-. The plaintiff paid Rs. 1,00,000/- as advance, which was accepted by Sumanbai and Defendant No. 2. When the plaintiff requested a written agreement, the defendants stated that they had not yet obtained the required sale sanction but assured they would do so and allowed the plaintiff to occupy the land.

21. As per the plaintiff case, he has deposited an amount Rs. 2,00,000/- as demanded by the defendants, vide bank statements dated 19/05/2021 issued by the Manager of Jyoti Kranti co-operative Credit Society Ltd., Jawala, Branch- Kharda, Tal. Jamkhed, Dist. Ahmednagar. On perusal of the said bank statement filed on record vide Exh.3/2, it appears that on 19/05/2021 the plaintiff had transferred an amount of Rs. 1,90,000/- and Rs. 10,000/- through NEFT. Whereas, on the other hand defendants have not disputed the said transaction.

22. The defendant No. 01 obtained permission to sell the remaining 40R of land on 07/12/2021. The plaintiff has consistently been ready to pay the balance amount to complete the transaction. However, despite repeated requests, the defendants delayed execution of the sale deed with various excuses. On 01/03/2022, when the plaintiff

offered to pay Rs. 5,00,000/- and requested registration of the sale deed, the defendants postponed the matter, indicating their unwillingness to proceed.

23. In this view of the matter, the existence of concluded oral agreement taken place between the parties cannot be denied. There is no case of any party that formation of concluded oral agreement was result of misrepresentation or undue influence or without free will, therefore, formation of contract under Section 10 read with Section 2(e) and (h) of Contract Act cannot be denied.

24. So far as non-existence of written agreement between the parties is concerned, as submitted by the learned Advocate for the plaintiff in his first submission, that there is no legal requirement under the law for written document to enforce the agreement which took place between the parties. Agreement can be oral and same is enforceable provided formation of the contract is with free will.

25. He further relied upon the judgment of the Hon'ble Supreme Court in the matter of *Alka Bose vs Parmatma Devi & Ors (2009) 2 SCC 582*, has clearly observed in paragraph 16 of its judgment as follows:-

"the Hon'ble Supreme Court held that an agreement of sale comes into existence when

the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. "

26. I have gone through the above judgement. The ratio laid down by the Hon'ble Supreme Court is squarely applicable to the facts of the present case. Therefore Considering the ratio laid down in ***Aloka Bose*** (supra) and the provisions enshrined under Section 10 of the Contract Act, 1872 and the proviso thereto, no attention has been drawn to any law applicable in the Maharashtra State at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid.

27. However, in the given circumstances, conduct of the parties explicitly indicates their intention to enter into an agreement for the purposes of sale and purchase of the suit property. Therefore, Even in absence of a written document, the plaintiff cannot be deprived of to protect his rights which occurred after accepting the proposal made by the promiser and he has acted upon in pursuance of that proposal.

28. Though, in the absence of any written agreement between the parties explaining the specific terms and conditions the ingredients as required under Section 16(c) of Specific Relief Act qua readiness and willingness at the part of the plaintiff to perform his part of contract cannot be ascertained. The plaintiff's intention to purchase the suit property is evident from his conduct, as on 20/05/2022, he went to the office of the Sub-Registrar along with the remaining consideration amount of Rs. 5,00,000/- for execution of the sale deed. However, the defendants failed to appear. This act clearly demonstrates that the plaintiff has always been ready and willing to perform his part of the contract.

29. *Prima facie*, bonafides of the plaintiff in performing his part of oral contract cannot be denied considering the last payment made by him in pursuance of bank statements dated 19/05/2021 and registered notice

dated 16/03/2022 sent to defendants No. 01 to 03 to execute registered sale deed of the suit property. As per the case of the plaintiff, he is ready to pay the remaining amount, for the purposes of execution of the sale deed, therefore, due diligence and boanfides at the part of the plaintiff cannot be denied in this matter.

30. The record shows that on 18.01.2022 defendants have executed the registered document of Power of attorney in favour of Yuvraj Gahininath Golekar bearing it's registration No. 130/2022. On perusal of the same it evince that the defendants No. 01 and 03 had executed the said document and defendant no. 02 has given consent for execution of same. Through said document defendants had given powers of sale of suit property to the power of attorney holder.

31. The record further shows that the plaintiff is in possession of the suit property. He has laid 115 PVC pipes for irrigation, constructed a farmhouse, and is also cultivating the suit property. In the given circumstances, it is explicit that the defendants are at the fault who are trying to avert their obligation to perform part of their contract, which was concluded between themselves and the plaintiff. Defendants have received the consideration money, however, averted their part to execute the registered sale deed in favour of the plaintiff. Thus the plaintiff established

a strong prima-facie case on the basis of undisputed facts.

32. The defendants remained absent though received the suit summons as well as the notices issued to them. Therefore, in these circumstances an adverse inference can be drawn against them.

33. An interlocutory orders passed under Order XXXIX, Rule 1 of Code of Civil Procedure, 1908 aim to balance the interests of the plaintiff without letting the creation of equity in the third party's favor so that specific performance of the contract could be easily sought. Rule 1 of Order XXXIX, of the Code of Civil Procedure, 1908, clearly demonstrates that, there can be occasion for the grant of injunction restraining *pendente lite* transfers in a fit and proper case.

34. The grant of relief in a suit for specific performance is itself a discretionary remedy. The conduct of the plaintiff is also a relevant consideration for interim injunction, in addition to the factors of *prima-facie* case, balance of convenience and irreparable injury. Considering the aforementioned facts and circumstances on record I answer points No. 01 to 03 in affirmative.

POINT NO. 04 :-

35. The primary purpose of a temporary injunction is to prevent irreparable harm or injustice during the course of litigation. It serves as a balancing act between preserving the rights of the parties and ensuring that justice is done. In answer to point No.04, I pass following order:-

-:ORDER:-

1. Application at Exh. 05 is allowed.
2. The defendant Nos. 01 to 03 are restrained by way of temporary injunction from alienating the suit properties and thereby creating third party interest therein out of Survey No.10/2, situated at Mauje Waki, Tal. Jamkhed, Dist. Ahmednagar, till final disposal of present suit.

(Dictated and pronounce in open court)

Date:- 09/06/2025.
Place:- Jamkhed.

(Anushri B. Phand)
Jt. Civil Judge Junior Division,
Jamkhed.