

**Order below Exhibit No.05**

**CNR. No. MHAH23-000605-2015**

The present application has been filed by the Plaintiff for restraining the defendants or their agents from obstructing their peaceful possession over the suit property.

2. It is the case of the Plaintiff that, the suit property bearing Gat no. 26 were mutated in the name of the father of the defendant no. 01 to 03 namely Muralidhar Bhagwan alias Bhagwant Kulkarni, his cousin Vasant Bhawant Kulkukarni and his grandmother Yashodabai Bhawan alias Bhawant Kulkarni vide mutation entry no. 1087. In the year 1988 at around Shimga festival the father of the defendants his brother and grandmother of the defendants agreed to sale the suit property for the purpose of repayment of loan. As the aforesaid property was convenient for the plaintiff for cultivation plaintiff agreed to purchase the suit property from the father of defendant no. 01 to 03 i.e. Muralidhar, brother Vasant and their grandmother Yashodabai for sale consideration of Rs. 25,500/- in front of witnesses by way of oral agreement.

The plaintiffs paid the sale consideration to defendant no. 01 to 03 from time to time in cash. However, before sale deed with respect to the aforesaid property could be executed father of the defendants i.e. Murlidhar expired on 22.04.1988. Thereafter, as per the oral agreement of sale the uncle of defendants no. 01 to 03 namely Vasant and their grandmother Yashodabai transferred the possession of their share in the suit property i.e. 5 Ana and 4 Pai in total aggregating in to 0.48R in the suit property i.e. Gat no. 26 on 02.12.1988. Sale deed was also registered with respect to 0.48R of land before the office of Sub-registrars, further, name of the plaintiff was also mutated in the 7/12 extract of the suit property vide mutation entry no. 779 with respect to 0.48R of land.

3. It is the case of the plaintiff that, as per the oral agreement between the father of the defendant no. 01 to 04 their Father Muralidhar, uncle Vasant and grandmother Yashodabai the share in the suit property belonging to the father of plaintiff i.e. Murlidhar to the extent of 0.24R of land in the suit property was also to be transferred in the

name of the plaintiff. However, due to the sad demise of the father of the defendants, the mother of defendant no. 01 to 03 namely Kamal became unsound and as defendant no. 01 to 03 were minors, agreement to sale could not be executed at that time. Further, as the sole male member of the family namely Murlidhar had expired plaintiff did not insist for execution of the aforesaid sale deed with respect to the share of Murlidhar. In the year 1990 defendant no. 04 Kamal i.e. mother of defendant no. 01 to 03 left her house and absconded from her house. Further, her whereabouts are not known till now. In view of the above facts and circumstances, it is the case of the plaintiff that, since 02.12.1988 the plaintiff are in possession of the suit property on the strength of the oral agreement to sale executed between the father of the defendant no. 01 to 03 namely Muralidhar, their uncle Vasant and their grandmother Yashodabai. It is further the case of the plaintiffs that, they are cultivating the suit property since 02.12.1988. It is further the case of the plaintiff that, they have made many improvements in the suit property.

However, in August-2013 the defendants were started causing obstruction to the peaceful possession of the plaintiff. The plaintiff at that time also called upon the defendant 01 to 03 to execute sale deed as per the oral agreement entered by their father Muralidhar, their uncle Vasant and their grandmother Yashodabai. However, the defendants no. 01 and 02 refused to execute sale deed. Further, defendant no. 01 and 02 also instituted R.C.S. No. 226/2013 against the plaintiff and made false allegations against the plaintiff. Therefore, the plaintiff was constrained to file the present suit for seeking specific performance of the oral agreement to sale entered in to between their father Muralidhar, uncle Vasant and grandmother Yashodabai. It is the case of the plaintiff that, if the defendants are not restrain from the obstructing to peaceful possession of the suit property irreparable loss would be caused to him. Hence, he has filed the present interim application restraining the defendants from obstructing the peaceful possession of the suit property and also restraining

the defendant no. 01 to 03 from creating any third party interest in the suit property.

4. Defendants no. 01 has filed consolidate say to the present application along with Written Statement at Exh. 22. It is the case of the defendants that, the defendant has denied that the, father of the defendant no. 01 to 03 i.e. Muralidhar had agreed to sale his share in the suit property i.e. Gat no. 26 on 02.12.1988. It is the case of the defendant that, their father Muralidhar had not agreed to sale his share in the suit property which comes to 26R. The sale deed executed on 02.12.1988 pertains to the share of Vasant and their grandmother Yashodabai. The father of the defendants did not agree to sale his share in the suit property to the plaintiffs. The father of the defendant i.e. Murlidhar did not have any connection to the sale deed executed on 02.12.1988 by Vasant and Yashodabai. The sale deed bearing no. 1902/1988 has no mention of Murlidhar selling his share of the suit property to the extent of 26R of land in the suit property. The suit property was always in possession of the father of the defendant

Muralidhar and he was owner of the suit property. His name is also mutated in the revenue records of the suit property. After the demise of their father Muralidhar name of defendant no. 01 to 03 was mutated in the revenue records and name of the defendant no. 04 was mutated in other rights column vide mutation entry bearing no. 753 as legal heir of their father Muralidhar. It is the case of the defendants that, the present suit is filed by the plaintiff is a counter blast to the suit filed by the defendant against the present plaintiff bearing R.C.S. NO. 226/2013. Hence, the present suit is liable to be rejected.

5. I have heard the Ld. Advocate for the parties and perused the record, on hearing the Ld. Advocates for the parties, following points arise for my determination.;

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1	Whether the plaintiff prove that, he has made out prima facie case for seeking interim injunction restraining the defendants from obstructing the peaceful possession of the suit property and restraining them from	No.

creating any third party interest in the suit property on the strength of their name 7/12 extact of the suit property.?

- 2 Whether the plaintiff prove that, balance of convenience lies in his favour ? No.
- 3 Whether the plaintiff prove that, irreparable loss would be caused to him if the injunction is not granted in his favour ? No.
- 4 What order ? Application is rejected..

**::REASONS::**

**As to Point No.01**

6. For the grant of interim injunction in favour of the plaintiff, the plaintiff has to establish that, he has prima facie case. Prima facie case means that he has arguable case. The Hon'ble Supreme Court in a catena of cases has held that "*Prima facie case*" means that, the Court should be satisfied that, there is a serious question to be tried at the hearing, and there is a probability of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. In view of the aforesaid

position of law, now, I proceed to determine whether the plaintiff has made out prima facie case in his favour.

7. It is pertinent to note that, the plaintiff has filed the present suit for seeking specific performance of alleged oral agreement to sale between the father of defendant no. 01 to 03 i.e. Muralidhar and the plaintiff on 02.12.1988 to sale his joint share aggregating to 26R of land in the suit property bearing Gat. no. 26. There is prima facie no material on record placed by the plaintiff to prove that, oral agreement to sale that executed between the father of the defendant no. 01 to 03 i.e. Murlidhar and the plaintiff. It is the theory of the plaintiff that, on 02.12.1988 father of the defendant no. 01 to 03 had agreed to sale his share in the suit property. However, perusal of the certified copy of the sale deed dated 02.12.1988 filed along with list of documents at Exh. 3/7 would reveal that, the aforesaid sale deed was executed between the his brother Vasant and their mother Yashodabai only and share of father of defendant no. 01 to 03 i.e. Murlidhar was not sold by way of the aforesaid sale deed. Further, perusal of the 7/12

extract filed along with list of document at Exh. 03/02 would reveal that, name of the defendant no. 01 to 03 is mutated in the occupant column of the 7/12 extract of the suit property. Therefore, I am of the prima facie view that, the plaintiff has failed to prove that, there was oral agreement to sale between the father of defendant no. 01 to 03 namely Muralidhar and the plaintiff whereby Muralidhar had agreed to sale his share i.e. 26R of land in the suit property bearing Gat No. 26 to the plaintiff. Hence, I am of the considered view that, the plaintiff has failed to make out prima facie case for the grant of temporary injunction in his favour. Hence, I answer point no. 01 in negative and record my findings thereon.

**As to Point no. 02 and 03**

08. I have already held in point no. 01 that, the plaintiff has failed to prove that, the existence of oral agreement to sale between the father of defendant no. 01 to 03 namely Muralidhar and the plaintiff whereby Muralidhar had agreed to sale his share i.e. 26R of land in the suit property bearing Gat No. 26 to the plaintiff.

Further, the perusal of the revenue records show that, prima facie show that, defendant no. 01 to 03 are in the possession of the suit property. Hence, I am of the considered view that, greater inconvenience would be caused to the defendants if the injunction is granted in the favour of the plaintiff.

9. Further, I am of the considered view that, if the defendants are restrained from creating third party in the suit property or their peaceful possession is obstructed irreparable loss would be caused to them. Hence, I answer point no. 02 and 03 in negative and record my findings thereon.

**As to point no. 04**

10. I have already held that, plaintiffs has failed to prove prima facie case, balance of convenience and that irreparable loss would be caused to the plaintiff if injunction is not granted in his favour. Therefore, the present application is liable to be rejected. Hence, I pass the following order:

**ORDER**

1. Application is rejected. .
2. No order as to cost.

Date: 30.03.2024

**(N. P. Baji)**  
2<sup>nd</sup> Jt. Civil Judge J.D.,  
S h r i g o n d a.

**CERTIFICATE**

I affirm that the contents of this PDF file are word to word as per original judgment.

Name of the Stenographer : D. T. Kasare

Name of the Court : Shri. N. P. Baji,  
2<sup>nd</sup> Jt. C.J.J.D.,  
Shrigonda.

Date of Order : 30 -03-2024

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