

**COMMON ORDER BELOW EXH.5 & 10**(Passed on 7<sup>th</sup> March, 2026)

Both the applications are filed for grant of temporary injunction restraining the defendants from creating any kind of third party interest in any manner in the suit property Under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, (for short C.P.C.).

02. The suit is filed for specific performance of contract in respect of the suit property mentioned in plaint para no.1. The suit is based upon agreement to sale dated 29.08.2025 by which defendant Nos.1 to 4 have agreed to sale the suit property to the plaintiff for the consideration of Rs.1,64,45,472/-. Out of it, they have paid the earnest amount of Rs.7,00,000/- to defendant Nos.1 to 4. The Sale-Deed was agreed to be executed on or before 30.10.2025. On 27.10.2025, the plaintiff issued notice through his Advocate asking the defendant Nos.1 to 3 to comply the conditions mentioned in the agreement to sale and execute the Sale-Deed. In the mean time, the plaintiff came to know that, defendant Nos.1 & 2 have transferred their 1/3rd undivided share in the suit property to defendant No.7. It is therefore, submitted that, the defendants in order to defeat the claim of plaintiff and his right accrued under the agreement to sale dated 29.08.2025, are trying to create third party interest in the suit property. Hence, the temporary injunction as mentioned above is prayed for.

03. Application Exh.5 was filed along-with plaint. Where as application Exh.10 is filed on 28.01.2026 in which the temporary injunction is prayed only against defendant No.7. It is contended that, during the pendency of the suit, defendant Nos.1

and 2 executed Sale-Deed of their undivided share in the suit property in favour of defendant No.7.

04. Defendant Nos.1 to 4 and defendant No.7 opposed both the applications vide their replies (Exh.23 & 24). It is not disputed that defendant Nos.1 & 2 have sold their undivided share in the suit property in favour of defendant No.7 by way of Sale-Deed. It is however, denied that defendant Nos.1 to 4 denied the execution of Sale-Deed in favour of the plaintiff as per agreement dated 29.08.2025. In deed, they did not commit any breach of the said agreement. It is the plaintiff who failed to perform his part of contract and therefore, he cannot claim the equitable relief of temporary injunction. It is further submitted that, defendant No.7 has purchased the portion of suit property for valuable consideration. He became the owner of that particular portion. If injunction is granted, he will be deprived from his right to utilize the suit property as the owner thereof. Hence, the applications are prayed to be rejected.

05. The points for determination along-with my findings thereon are as under :-

| <b>Sr. No.</b> | <b>Points</b>   | <b>Findings</b>                |
|----------------|---|--------------------------------|
| 1.             | Does the plaintiff establish prima-facie case ?   | <b>Yes.</b>                    |
| 2.             | Does he further establish that, balance of convenience lies in his favour ?                                     | <b>Yes.</b>                    |
| 3.             | Whether the plaintiff would suffer irreparable loss, if the relief of injunction is not granted in his favour ? | <b>Yes.</b>                    |
| 4.             | What Order ?  | Both applications are allowed. |

## REASONS

### As to Point Nos.1 to 4 :-

06. I had an opportunity to Advocate Shri P.M. Yadgire for the plaintiff and Advocate Shri S.R. Rahane for defendant Nos.1 to 4 and 7.

07. The Learned Advocate for defendants tried to propagate that, defendant Nos.1, 2 and 7 were not having knowledge about the pendency of present matter. The Advocate for plaintiff brought to my notice that, paper publication was made regarding pendency of present matter and cautioning the public at large regarding any transaction of transfer in respect of the suit property or portion thereof. Even if it is assumed that, this paper publication was not known to the said defendants, it cannot be ignored that, they received notice issued by plaintiff dated 27.10.2025. By the said notice, the plaintiff has called upon defendant Nos.1 to 3 to comply the conditions mentioned in agreement dated 29.08.2025 and execute the Sale-Deed. As a matter of fact, defendant Nos.1 to 4 have replied the notices issued by plaintiff dated 06.11.2025 and dated 27.10.2025 as per reply dated 29.08.2025. They have raised the fact that, due to said transaction they would be suffering loss to the extent of Rs.33,81,312/-.

08. The Learned Advocate for defendants also relied upon the fact that, a prior to agreement to sale dated 29.08.2025, defendant Nos.1 to 4 have mortgaged the suit property in favour of the bank. The agreement dated 29.08.2025 is silent in respect of undertaking by the plaintiff as to whether he would be clearing

those dues to redeem the suit property from the bank. Interesting it the execution of agreement to sale dated 29.08.2025 is undisputed. I have carefully gone through the recitals of the said agreement. In para 2 of the agreement, it is mentioned that, defendant Nos.1 to 3 have undertaken to clear the loan of the Banks so as to remove the encumbrance on the suit property. It shows clearly that, the responsibility to make the property clear was on defendant Nos.1 to 3. The measurement of suit property was also undertaken by the said defendants. There is no mentioned of any condition which is to be fulfilled by the plaintiff.

09. The most notable aspect is that, despite of said encumbrance, defendant Nos.1 and 2 sold their undivided share to defendant No.7. Thus, it shows clearly that, the said encumbrance was not a hurdle to proceed to execute the registered Sale-Deed. In any manner, defendant Nos.1 to 3 after admitting execution of agreement to sale and after admitting the receipt of earnest amount, cannot be allowed to take disadvantage of their own wrongs. I am specifically talking about removal of encumbrance from the suit property which was undertaken by the said defendants.

10. The Learned Advocate for defendants also tried to raise a point that, defendant No.4 is not a party to the agreement in question. He is not a party to the said agreement. However, that by itself is no ground to observe that the pleading of plaintiff that, he paid certain amount towards the earnest money to defendant No.4 by UPI transaction. In any manner this fact cannot be said to be fatal to the cause of plaintiff.

11. The existence of agreement to sale and undisputed execution of such agreement is sufficient enough to observe that, the plaintiff has raised a fair question which requires detailed inquiry. Thus, the plaintiff is able to establish prima-facie case. Defendant Nos.1 to 4 suddenly came up with the case that, they would be suffering huge loss of around Rs.33 lakhs. There is nothing in main agreement to sale to observe that, defendant Nos.1 to 3 have raised this point in the main agreement. It is not their contention that, the plaintiff is not ready to fulfill his part of contract or he got the agreement to sale executed by misleading them. It shows clearly that, the balance of convenience lies in favour of the plaintiff. One sale transaction in respect of portion of the suit property is already taken place during the pendency of the present matter. The apprehension expressed by the plaintiff that, if not restrained, the defendants may further create third party interest in the suit property is proper and genuine.

12. Under the above mentioned circumstances, I answer Point Nos.1 to 3 in the Affirmative and in answer to Point No.4 passed the following order.

**ORDER**

1. Both applications (Exh.5 and 10) are allowed.
2. Defendant Nos.1 to 4 and 7 are temporarily restrained from creating any kind of third party interest in the suit property in any manner whatsoever.
3. Costs in main cause.

Date: 07/03/2026.

**(Shivnath M. Kale)**  
Civil Judge (Sr. Dn.), Akot.

**CERTIFICATE**

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

Name of Steno : S. G. Jaiswal  
Court Name : Civil Judge, S.D., Akot.  
Date : 07/03/2026.  
Order Signed by P.O on : 07/03/2026.  
Order Uploaded on : 07/03/2026.