



ORDER BELOW EXH.5.
(Passed on 26th March, 2024)

This is an application filed by the plaintiff under Order-XXXIX, Rule-1 and 2 of the Code of Civil Procedure for the relief of temporary injunction restraining the defendant no. 2 from paying compensation to defendant no.1 in respect of the acquisition of the portion of the property Gut No.16/B area 0 H 84 R which is more specifically described with its four boundaries in para no.1 of the plaint (hereinafter said property is referred as suit property only) till the decision of this suit.

2. In this application plaintiff has contended that she has filed this suit for the relief of specific performance of contract along with relief of perpetual injunction. She has further contended that the defendant no.1 is the owner and possessor of suit property. On 27.3.2023 defendant no.1 had agreed to sell the suit property to the plaintiff and so also agreed for executing and register agreement to sell on 6.4.2023 for the sale of suit property to plaintiff for the consideration of Rs.11/- lakhs. On 6.4.2023 the plaintiff has paid the earnest amount of Rs.2/- lakhs to defendant no.1. But on 6.4.2023 the sufficient required amount was not available with plaintiff, therefore, on that day, registered agreement to sale could not be executed and as per fresh terms of transaction on 15.6.2023 plaintiff supposed to pay further earnest amount of Rs.3/- lakhs to defendant by RTGS or cheque and the defendant supposed to execute the registered agreement to sale in favour of plaintiff. Therefore, on 15.6.2023 plaintiff remained present for the execution of registered agreement to sale in Sub-Registrar Office, Telhara but defendant failed to come there for executing such registered agreement to sale in favour of plaintiff.

Therefore, on 22.6.2023 plaintiff has issued a notice to defendant no.1 through her Advocate and informed him that she is ready to pay the remaining amount of Rs.9/- lakhs to him and therefore she had informed defendant no.1 to remain present in Sub-Registrar Office, Telhara on 6.7.2023. On that day, the plaintiff was remained present in Sub-Registrar Office, Telhara. Though on 6.7.2023 also the defendant failed to remain present in Sub-Registrar office, Telhara for executing sale-deed of suit property in favour of plaintiff. Therefore, plaintiff has filed this suit for the relief of specific performance of contract. Now, the plaintiff came to know that out of suit property few gunthas of land are going to be acquired by Indian Railway and notification in that regard is published and defendant no.2 is going to acquire such land. Therefore, plaintiff is also seeking injunction against the defendant no.2 that while awarding compensation against the acquisition of the portion of suit property, the defendant no.2 be restrained from awarding such compensation to defendant no.1 till the decision of this suit.

3. The defendant no.1 has filed his reply to this application at Exhibit 40. He has denied the most of the assertions mentioned by the plaintiff in this application. He has further contended that he was in need of money and he heard that the plaintiff does the money lending. Therefore, he took the loan of Rs. 2/- lakhs from the plaintiff and for the security of said loan, he had signed some blank stamp papers and said stamp papers were given to the plaintiff. Further said amount of Rs.2/- lakhs is paid by him to the plaintiff in presence of Afrozkhya Ayyajkha and Abdul Ejaj Abdul Sadique. But after the repayment of said loan amount also the plaintiff refused to return the blank stamp papers which were taken by her from the defendant no.1. Said act of

plaintiff is totally illegal and by misusing said stamp papers she has prepared false agreement to sale and on the basis of said false agreement to sale she has filed this false suit against the defendants. This suit is not at all tenable so, this suit and present application for temporary injunction may kindly be rejected with costs.

4. The defendant no.2 has also filed its written statement-cum-reply at Exhibit 10. In its reply the defendant no.2 has admitted that the primary notification in respect of acquisition of land for Railway is already published. It is further contended by the defendant no.2 that yet joint measurement report is awaiting and after receiving said joint measurement report the further notification regarding acquisition of land for railway would be published in gazette and newspaper so as to receive the objections of aggrieved persons. So also transactions occurred between the plaintiff and defendant no.1 are their separate transactions and defendant no.2 has no concern with it. The compensation against the acquired land will be paid by relying on the names of land owners mentioned in 7/12 extract of acquired land. Further said compensation would be subject to the order of this court.

5. Considering overall record the following points are arisen before me for its decision. I have recorded my findings thereon for the reasons given their below.

<u>Points</u>	<u>Findings</u>
1) Whether the plaintiff has made out a <i>prima-facie</i> case in her favour ?	In the partly affirmative
2) Whether the plaintiff has proved that balance of convenience lies in her favour ?	In the partly affirmative
3) Whether the plaintiff has proved that, she will suffer irreparable loss, if the temporary	In the partly affirmative

injunction is refused ?

4) What order ?

As per final
order.

REASONS

6. Heard the learned respective Advocates of both sides at length. On going through the documents produced by plaintiff on record, it prima facie appears that defendant no.1 is the owner of the suit property. Further, from the copy of agreement to sale produced by plaintiff on record it appears that the defendant no.1 has entered into said agreement for the sale of suit property to plaintiff. The defendant no.1 is contending that he has signed the stamp papers of said agreement to sale as security against the loan obtained from plaintiff and at the time of signing said stamp papers that stamp papers were blank stamp papers and by misusing the said stamp papers, the plaintiff has prepared a false document of agreement to sale. In such circumstances, prima facie it appears that the defendant no.1 is admitting his signature over the stamp papers of the agreement to sale relied by plaintiff. The issue whether said agreement to sale is false and it is prepared by misusing blank stamp papers can be decided by due course of trial. But at this juncture it is prima facie proved that the signatures appearing on the agreement to sale in dispute are the signatures of the defendant no.1. Further, the defendant no.1 has admitted in his written statement and say that he had received the amount of Rs.2/- lakhs from the plaintiff. But he is further contending that he had received said amount as loan and he has repaid the said loan amount. In such circumstances, prima facie it needs to be held that the plaintiff has paid the amount of Rs. 2/- lakhs as mentioned in plaint to defendant no.1 and defendant no.1 has executed the

agreement to sale dated 6.4.2023 in favour of her. The issue whether the amount paid by the plaintiff was earnest amount or it was an amount of loan can also be decided by due course of trial. In such circumstances, prima facie it appears that, in this suit material issues are arisen which can be decided due course of trial only. Further from the copy of the notice dated 22.6.2023 issued by the plaintiff it appears that plaintiff has prima facie shown her ready and willingness to perform the part of her contract. The defendant no.1 has sent his reply notice to plaintiff and its copy is produced on record. In said notice also the defendant no.1 has contended that the plaintiff has misused the blank stamp papers and she has prepared the false agreement to sale. But there is nothing on record to show that till today the defendant no.1 has lodged any criminal complaint against the plaintiff for the offense of forgery. In such circumstances, prima facie it needs to be believed that the defendant no.1 has executed the agreement to sale of suit property in favour of plaintiff. Further, prima facie there is nothing on record to show that the defendant no.1 has repaid the amount of Rs.2/- lakhs to the plaintiff as claimed by him in his written statement.

7. Further, from the copy of notification published in the gazette and the say filed by defendant no.2, it prima facie appears that some portion of suit property is going to be acquired for Indian Railway and against said acquisition, compensation is going to be paid by the defendant no.2. In such circumstances, it would be very difficult to direct the defendant no.1 to execute the sale-deed of whole suit property including the portion of suit property which is going to be acquired by Indian Railway by granting decree of specific performance of contract as sought by plaintiff. As prima facie it is proved that the

plaintiff had paid the amount of Rs.2/- lakhs to the defendant no.1 and as prima facie there is nothing on record to show that the defendant no.1 has repaid said amount to the plaintiff. In such circumstances, if the amount of whole compensation against acquired portion of suit property is paid to defendant no.2 only then the plaintiff will be unable to recover the earnest amount paid by her to defendant no.1 and thereby she may suffer great irreparable loss. Contrary, if the defendant no.2 is restrained to pay the amount of Rs.2/- lakhs to the defendant no.1 out of the whole compensation awarded against the acquisition of the portion of suit property then no irreparable loss will be caused to any party. Therefore, for the sake of justice, it would be just and proper to direct the defendant no.2 to deposit Rs.2/- lakhs in court out of the whole compensation granted against the acquisition of the portion of suit property for Indian Railway by giving liberty to defendant no.2 to pay the remaining compensation of said acquired portion to defendant no.1. Further, it would be just and proper to keep the said amount of Rs.2/- lakhs as deposit in court till the final decision of this suit as said amount can be paid to the party who will be entitled to get it due to the result of this suit.

8. Considering the above overall discussed aspects, it can be held that the plaintiff has prima facie partly proved her case and balance of convenience is also partly in her favour. Hence, in answer to point nos. 1 to 3, I record my findings in partly affirmative and in answer to point no.4, I pass the following order.

: ORDER :

1. The application Exh.5 is partly allowed.
2. The defendant no.2 is hereby restrained from paying the whole amount of compensation against the acquisition of the portion of the suit property exclusively to defendant no.1 only till the final decision of this suit.
3. The defendant no.2 is hereby directed that, if any amount of compensation is awarded against the acquisition of the portion of suit property, then while paying such compensation, out of whole amount of said compensation, the defendant no.2 shall deposit the amount of Rs.2/- lakhs in this court and may pay the remaining amount of such compensation to defendant no.1.
4. If the amount of Rs.2/- lakhs out of the above said compensation is deposited by the defendant no.2 in this court, then it shall be remained in court till the final decision of this suit.
5. Costs in main cause.

Date : 26.03.2024.

(Mahesh S. Kale)
Civil Judge (Sr.Dn.),
Akot.

CERTIFICATE

I affirm that the contents of this P.D.F. are same word for word as per original order.		
1	Name of Stenographer.	Anil Manohar Kale.
2	Court Name.	Civil Judge (S.D.), Akot.
3	Date of order.	26.03.2024.
4	Signed by P.O. on	26.03.2024.
5	Uploaded on.	26.03.2024.

