

**SPECIAL CIVIL SUIT NO. 1/2013****ORDER AT EXHIBIT 47***Dattatray Prabhakar Dhumal & anr.*

vs.

*Haroon Dadamiya Kureshi (dead) through L.Rs.*

1. The present application is filed by the plaintiffs seeking relief of injunction restraining the defendants No. 2 and 9 from getting measured the suit property by TILR, Vaijapur and putting fencing on the suit property. It is contended that, the defendants No. 1 to 6 have executed an agreement of sale on 25.03.2009 in favour of the plaintiffs in respect of suit property for consideration of an amount of Rs. 44,21,875/-. The plaintiffs have paid part consideration of an amount of Rs.4,21,875/- to the defendants No. 1 to 6. The plaintiffs are in possession of suit property from the date of execution of Isar Pavti dated 26.05.2008. The possession of plaintiffs of the suit property has been admitted by the defendants in their written statement filed in Spl.Civil Suit No. 159/2010. It is further contended that, the defendant No. 2 and one Haroon Budhan Chaudhari have sought measurement of suit property by TILR, Vaijapur. It is further contended that, the defendants No. 2 and 9 had attempted to put fencing on the suit property with the police aid. According to the plaintiffs, the defendants No. 2 and 9 are attempting to take the possession of suit property by getting measured the suit property and putting fencing on the suit property even there being no order of Court in respect of the same. The defendants No. 2 and 9 have suppressed the fact of institution of present suit and civil suit bearing Spl.C.S. 159/2010 from the TILR, Vaijapur and police for seeking measurement of suit property and police aid for putting fencing on the suit property respectively. It is contended that, the plaintiffs being in possession of suit property in pursuant to the said Isar Pavti and agreement of sale, they may suffer an irreparable loss if the measurement of suit property

is carried out by the TILR, Vaijapur and if the fencing is put on the suit property. Hence, the present application.

2. The defendants No. 7 to 10 have opposed the present application by filing their say. They have submitted that, the suit property is not possessed by the plaintiffs. It is further submitted that, the defendants No. 7 to 10 have filed a civil suit bearing Spl.Civil Suit No. 159/2010 for specific performance of contract against the original owners of suit property prior to institution of present suit. It is further submitted that, the measurement of suit property in respect of which the injunction is sought by the plaintiffs, has already been carried out. Therefore, the present application is not maintainable in law. According to the defendants No. 7 to 10, the present application is filed by the plaintiffs only with an intent to prolong the hearing of present suit. Hence, it is prayed that, the present application may be rejected.

3. The defendant No. 4 has submitted vide his say that, the written statement filed by him at Exh. 37 on 20.08.2013 may kindly be treated as his say on the present application.

4. Considering the pleadings of both sides, the following points arise for my determination and I have recorded my findings thereto for the reasons stated as under.

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiffs have made out a prima facie case ?	In the negative
2. Whether the balance of convenience lie in favour of the plaintiffs ?	In the negative
3. Whether an irreparable loss would be caused to the plaintiffs if the relief of temporary injunction as prayed for, is refused ?	In the negative
4. What order ?	As per final order

**REASONS**5. AS TO POINT NO. 1 TO 3 :-

The points No. 1 to 3 are interlinked with each other and therefore they are discussed together and not reasoned out separately and individually.

6. I have heard the learned counsel of both sides. I have perused the record. It is apparent from the record that, the plaintiffs have filed the present suit contending inter alia therein that, the defendants No. 1 to 6 have executed an Isar Pavti dated 26.05.2008 and agreement of sale dated 25.03.2009 in their favour and they are in possession of suit property by virtue of the same. Accordingly, the plaintiffs have sought the relief of specific performance of contract i.e. agreement of sale dated 25.03.2009 against the defendants. It is apparent from the record of Spl.Civil Suit No. 159/2010 that, the defendants No. 1 to 6 have admitted the possession of plaintiffs of the suit property in their written statement. However, admittedly, the agreement of sale by virtue of which the injunction is sought by the plaintiffs is unregistered document. The plaintiffs have claimed their possession of the suit property by virtue of unregistered agreement of sale. However, by the amendments made by the Registration and other related Laws (Amendment) Act,2001, which has come into force with effect from 24.09.2001, it is made clear that, unless the documents containing contract to transfer for consideration any immovable property for the purpose of Section 53-A of the Transfer of Property Act is registered, it shall not have effect for the purposes of Section 53-A. Therefore, the protection of possession can be availed by the plaintiffs only under registered agreement of sale. The agreement of sale dated 25.03.2009 being unregistered document, the plaintiffs are not entitled to claim

any relief including injunction as sought in respect of said agreement of sale. Hence, I answer the points No. 1 to 3 in the negative and pass the following order :-

**ORDER**

1. The present application shall stand rejected.
2. There shall be no order as to cost.

Place: Vaijapur  
Date : 15.04.2015

Sd/-  
(R.J.Pawar)  
Jt.Civil Judge,S.D.,Vaijapur

CERTIFICATE

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

Name of the Stenographer	: M.B. Khonde
Court	: Jt.Civil Judge,S.D. Vaijapur
Date	: 15.04.2015
Judgment signed by the presiding officer on	: 15.04.2015
Judgment uploaded on	: 17.04.2015