

SPECIAL CIVIL SUIT NO. 159/2010
ORDER AT EXHIBIT 121

Kazi Musa Hussain & ors.

vs.

Haroon Dadamiya Qureshi

1. The present application is filed by the defendants No. 10 and 11 seeking relief of injunction restraining the defendant No. 5 and other defendants from getting measured the suit property by TILR, Vaijapur and restraining the cadastral surveyor from measuring the suit property. It is contended that, the defendants No. 1 to 7 have executed an Isar Pavti and agreement of sale on 26.05.2008 and 25.03.2009 in favour of the defendants No. 10 and 11 in respect of suit property. The possession of defendants No. 10 and 11 of the suit property is admitted to the plaintiffs and defendants No. 1 to 9. It is further contended that, the Court has issued injunction on 05.09.2009 on the application of plaintiffs at Exh. 36 whereby the defendants No. 1 to 9 are restrained from alienating the suit property and creating third party interest in respect thereof in favour of any person. It is however, the defendant No. 5 and other defendants are attempting to alienate the suit property to one Haroon Budhan Chaudhari. For that purpose, they have sought measurement of suit property by TILR, Vaijapur by filing an application on 16.12.2013. The defendants No. 10 and 11 had lodged their objection with TILR, Vaijapur in respect of measurement of suit property. The TILR, Vaijapur, the defendant No. 5 and other defendants are however not paying any heed to the objection of defendants No. 10 and 11. The defendant No. 5 and other defendants are attempting to show that, they are in possession of the suit property by getting measured the suit property. The defendants No. 10 and 11 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. Hence, the present application.

2. The plaintiffs have opposed the present application by filing their say. They have submitted that, the suit property is not possessed by the defendants No. 10 and 11. It is further submitted that, the defendants No. 10 and 11 have filed a civil suit bearing Spl.Civil Suit No. 1/2013 for specific performance of contract i.e. agreement of sale dated 25.03.2009 and for possession of suit property. Therefore, the defendants No. 10 and 11 cannot seek the injunction as sought as they are not in possession of suit property. It is submitted that, the measurement of suit property in respect of which the injunction is sought by the defendants No. 10 and 11 has already been carried out. It is therefore submitted that, the present application being filed only with an intent to prolong the hearing of present suit, the same may be rejected.

3. Considering the pleadings of plaintiffs and defendants No. 10 and 11, 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 defendants No. 10 and 11 have made out a prima facie case ? | In the negative |
| 2. Whether the balance of convenience lie in favour of the defendants No.10 and 11 ? | In the negative |
| 3. Whether an irreparable loss would be caused to the defendants No. 10 and 11 if the relief of temporary injunction as prayed for, is refused ? | In the negative |
| 4. What order ? | As per final order |

REASONS4. 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.

5. I have heard the learned counsel of both sides. I have perused the record. It is apparent from the record that, the injunction has been issued on the application of plaintiffs at Exh. 36 restraining the defendants No. 1 to 9 from alienating the suit property and creating third party interest in favour of any person. It is also apparent from the record that, the defendants No. 10 and 11 have come up with a specific case that, the defendants No. 1 to 7 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. The fact is admitted to the defendants No. 10 and 11 that, the said agreement of sale is unregistered document. The defendants No. 10 and 11 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 defendants No. 10 and 11 only under registered agreement of sale. The agreement of sale dated 25.03.2009 being unregistered document, the defendants No. 10 and 11 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.

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|---------------------------------------------|--------------------------------|
| 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 |