


MHJN020006082022 	Spl.C.S NO. 201/ 2024 Kannusingh Taji Vs. Khan Abdul
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**ORDER BELOW EXH. 5**

This is suit for declaration of ownership in respect of survey no. 452/1 ad-measuring 80R situated at Tq. District Jalna along with the relief of possession by way of cancellation of sale-deed bearing no. 2510/2021 executed on 08/06/2021 and perpetual injunction against defendant for not to create any third party interest. This application is moved for seeking interim injunction to restrain the defendants or any one claiming through them from creating third party interest in the suit property.

2- It is submitted by the plaintiff that he is well acquainted with the defendant through the common chartered accountant. The defendant approached the plaintiff and showed his willingness to purchase 80R land of defendant out of survey no. 452/1 ( hereinafter referred as suit property.) Accordingly, the consideration of Rs, 1,80,00,000 was fixed and terms and conditions were settled. It was agreed between the parties that consideration amount will be paid by way of cheque. The defendant assured that post dated cheques for consideration amount would be honored on its mentioned dates. The defendant issued cheque bearing no, 095314 drawn on Axix Bank Branch Garkheda for Rs, 5,00,000/- dated 10/05/2021. It was honored and therefore plaintiff trusted the defendant. At the request of defendant plaintiff has executed registered sale-deed bearing no. 2510/2021 dated 09/06/2021 in respect of land survey no. 452/1 to the

extend of 80R with the consent of his son in presence of witnesses. At the time of execution the defendant issued various cheque including post dated cheques with his signatures. Out of above mentioned cheques, last cheque bearing no. 081864 for the amount of Rs, 70,00,000/- dated 31/01/2022 was dishonored for reason 'Funds Insufficient' with memo dated 16/03/2022. Thereafter, plaintiff and his family members approach defendant for balance consideration but the defendant fail to pay the same. As the plaintiff has not receive the entire consideration amount. The sale-deed become vide ab-initio and not binding over the rights of plaintiff. The plaintiff is therefore entitled to get the possession of suit land from the defendant. Due to non-fulfillment of contract plaintiff suffered huge financial loss. The defendant is trying to create third party interest over the suit land and therefore plaintiff prayed to grant temporary injunction to restrain the defendant from creating third party interest, cultivating or carrying any agricultural activities in respect of suit land.

3- The defendant submitted say and resisted the claim of plaintiff. Defendant has admitted the contract as well as the fixation of consideration amount for purchasing the suit property. He further submits that he has paid the entire consideration amount. The plaintiff has obtained the consent of his sisters for the sale-deed on 03/03/2022,29/03/2022,17/02/2022 and 12/04/2023. The defendant has deposited the amount of consideration in the account of plaintiff. As per defendant he has paid token amount of Rs. 5,00,000/-, at the time of sale-deed Rs. 45,00,000/-, on 18/06/2021 Rs. 45,00,000/- by way of R.T.G.S., on 30/09/2021 Rs. 30,00,000, on 21/12/2021 Rs. 30,00,000/-, on 16/04/2022 Rs.5,00,000/-, on 13/05/2022 Rs. 5,00,000/-, 12/07/2022 Rs. 2,50,000/-, on 07/10/2022 Rs. 1,75,000/-, on 15/02/2023 Rs. 2,00,000/- so also remaining amount of Rs. 1,00,000/- paid online and on 15/06/2022 Rs. 3,50,000 were paid through R.T.G.S. as

such the defendant has pay amount of Rs. 1,67,25,000/-. The transaction of sale was not complete till 12/04/2023 and till then the defendant has paid entire amount of consideration. After getting the possession in view of sale-deed the defendant has prepared lay out of suit property and has sold 18 plots to different people by way of registered sale-deed. The plaintiff has illegally took possession of two plots against the balance consideration. As such he has received entire consideration. The plaintiff has not added the subsequent purchaser in the suit. Hence, defendant prayed to reject the application.

4- The points for consideration along with my findings thereon for the reasons to follow are as under-

<b>Sr. No.</b>	<b>Points for determination</b>	<b>Findings</b>
1.	Whether plaintiff is having prima-facie case in his favour	Yes.
2.	Whether plaintiff is having balance of convenience in his favour?	Yes.
3.	Whether plaintiff will suffer if injunction is not granted	Yes.
4.	What order ?	Application is allowed.

5- Heard, Ld. Advocate for plaintiff. In spite of calling repeatedly no one appeared to argue on behalf of defendant since last two dates. Hence, the application is taken for adjudication against the defendant on merits.

**As to point no. 1**

6- It is argued for the plaintiff that the defendant has not paid the major amount of consideration and is enjoying the fruits of property. The plaintiff trusted the defendant and accepted the cheque. However, the same

got dishonored. Hence, the sale-deed is not binding on the plaintiff. The defendant is in an attempt to create third party interest in the entire suit property hence the defendant needs to be restrained temporary relief till the final disposal of suit.

7- In the light of arguments of the plaintiff I have gone through the record it transpires that the defendant has agreed the execution of sale-deed, the amount of consideration for the suit property as well as issuance of cheque as alleged by the plaintiff and as is mentioned in the sale-deed. The recitals of sale-deed show that the defendant has issued in all 5 cheques for payment of the entire consideration amount. The consideration was fixed to be of Rs. 1,80,00,000/-. There is no dispute about the ownership of plaintiff over the suit property.

8- As per plaintiff the transaction of sale could not get completed till 12/04/2023 as the consent-deeds of four sisters of plaintiff were not registered. Though, plaintiff submits that the consents were received by the plaintiff on 17/03/2022, 29/03/2022, 03/03/2022 and 12/04/2023, the defendant himself submitted that he has prepared layout and plotting over the said suit property and has sold 18 plots to different purchasers. If the number of sale deed is considered, it transpires that before the completion of sale transaction as alleged by defendant himself, he has created third party interest in the suit property.

9- It is also necessary to consider here that the payment of consideration, as specified in the sale-deed was by way of cheques mentioned in it. Though defendant is submitting that he has made payment of entire consideration by way of paying the account of plaintiff, he has only provided the date of R.T.G.S. of two transactions. The details of other

payments are not on record. So also, the defendant has not made it clear as to why there was need of payment of consideration other than the mode specified in the sale-deed. Though defendant submits that plaintiff has illegally taken possession of two plots against the balance consideration, there is nothing on record at this juncture to support this contention. The plaintiff has produced on record the copy of cheque issued by the defendant along with the dishonor memo. In this circumstances it is hard to believe that the defendant has paid the entire consideration for purchasing the land of plaintiff. Therefore, prima-facie the contentions of plaintiff about non payment of entire consideration amount seem to be probable. Therefore, plaintiff is having prima-facie case in his favour.

**As to point no. 2 & 3.**

10- The defendant submitted that the sale transaction was not completed till 12/04/2023. However, defendant appears to be creating third party interest over the suit properties since prior to the payment of entire consideration amount. If the temporary injunction is not granted in favour of plaintiff there are chances that defendant may create third party interest the entire suit property. This will certainly caused irreparable loss to the plaintiff. Hence, I hold that balance of convenience is also in favour of plaintiff. Accordingly, I answer this two points in affirmative.

**As to point no. 4-**

11- In view of my discussion and findings for point no. 1 to 3 I hold that the application for temporary injunction deserves to be allowed. As such, I pass following order.

**ORDER**

1. The application is allowed.
2. The defendant, his agents, servants or anyone claiming through him are temporarily restrained from causing and creating third party interest in the suit property and also restrained to work over the suit land till final disposal of suit.
3. Cost in cause.

Date : 09-07-2025

(Smt. S.K. Dugaonkar)  
5<sup>th</sup> Jt. Civil Judge Sr. Division  
Jalna.

**CERTIFICATE**

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

Name of Steno : K.Y.Patil  
Name of the Court : 5<sup>th</sup> Jt. CJSD, Jalna  
PDF Date : 09.07.2025.

Signature of Stenographer