

MHJN020008692022



Spl.C.S.No.183/2022
Krushna Vs. Rajureshwar
Construction & Dev. Jalna through
Prop. Pratap & ors.

ORDER BELOW EXH. 05
(Passed on 17th August, 2024)

This is an application moved by the plaintiff under Order XXXIX, Rule 1 and 2 of Civil Procedure Code, 1908 to restrain defendants from creating third party interest and also alienating the same to any person in any matter by any one else till final disposal of this suit.

Facts of the application in nutshell are as under:-

02. The plaintiff asserted that Row house no. 7 ad. 620 sq. feet of Plot no.44 of which, CTS No.16098 out of Survey no. 329/2 ad. 125.60 sq. mt. situated at Jalna, which is well described in the claim clause of the plaint is owned by the defendant no.2 so, there is dispute regarding this property (Hereinafter this property is called as suit property for sake of convenient).

03. He further asserted that he is an agriculturist and having profession of milkman (Gavli) and resident at Jalna. Defendant no. 1 namely Pratap Hasanrao Lahane is a proprietor of the said firm and running business of building construction and developments of immovable properties under the name and style of “ Rajureshwar Constructions and developers, Jalna ” Defendant no.2 is owner &

occupant of Plot no.44 of which, CTS No.16098 out of Survey no. 329/2 ad. 125.60 sq. mt. situated at Jalna.

04. He further submitted that both defendants entered into developments agreement dt. 09/11/2020 to develop the plot no.44 and agreed between them to construct the two row houses upon the plot no.44 out of survey no.329/2 situated at Jalna and said two row houses have been given numbers as 7 and 8. It is further agreed between them that defendant no.1 would bear entire expenditure of construction of two row houses and out of which, row house no.7 will be owned by defendant no.1 and row house no.8 will be kept for defendant no.2. They have further inter-alia agreed that defendant no.1 is authorized to enter into contract to sell the suit property bearing row house no.7 and defendant no.2 will execute registered sale-deed of suit property with whom defendant no.1 entered into contract to sale it. Accordingly, plaintiff was willing to purchase the suit property & thereafter entered into contract to purchase the suit property and therefore, defendant no.1 executed agreement-to-sell dt. 09/11/2020 by accepting amount of Rs. 10,00,000/- towards sale consideration. They have further agreed to execute the registered sale-deed by accepting rest of sale consideration amount of Rs. 6,57,000/- on or before 09/07/2021. They have further agreed that possession of suit property will be delivered after executing of sale-deed.

05. The plaintiff further asserted that he requested to the defendants to complete the construction work of suit property and do execute the sale-deed by accepting rest of sale consideration amount. But, he failed to execute the same. So, he issued demand notice through his ld. advocate on 12/01/2022. But, on service, defendants sent false reply.

The plaintiff was/is ready & willing perform his part of contract. Both defendants are jointly & severally liable to execute the sale-deed. They are trying to alienate the suit property. The cause of action accrued on 09/07/2021. On these allied grounds, he prayed to allow the application with costs.

06. In reply to the notice-cum-suit summons, defendant no.1 appeared and filed his say-cum-written statement at (Exh.43) by denying all adverse assertions against him and submitted that the plaintiff is doing money lending business. Defendant no.1 is doing business of construction work so, always in need of money. On demand, the plaintiff lent him amount of Rs. 10,00,000/- and in lieu of that, he executed the one document undersigned by the plaintiff & defendant no.1. None witnesses present on the date of executing the document. Said document is false & bogus. The plaintiff is now demanding the said amount with interest and also beat him. The defendant no.1 lodged the complaint with Police station on 22/10/2021.

07. He further averred that during pendency of this suit, defendant no.1 purchased suit property and he now became owner & occupant of it vide registered sale-deed bearing no.4486/2023 dt.14/08/2023. The defendant no.1 has also entered into composition with plaintiff wherein, plaintiff accepted amount of Rs. 10,00,000/- along-with interest and agreed to withdraw the present suit by showing pursis dt.09/08/2023. He gave one zerox copy of that pursis. But, he did not withdraw the present suit. He filed this false & fabricated suit so, request to dis-allow the application with costs.

08. On service, defendant no.2 appeared and filed his say-cum-written statement at (Exh.45) by denying all adverse assertions against him and submitted that defendant no.1 purchased the suit property and now he became owner & occupant vide registered sale-deed bearing no.4486/2023 dt. 14/08/2023. Defendant no.2 is not necessary party & impleaded without any cause. He has not concern with the dispute of plaintiff & defendant no.1. The present suit & application is not maintainable against the defendant no.2. The plaintiff has not paid stamp duty on the agreement-to-sell and also the said document is not impounded. On these & allied grounds, he requested to dismiss the application with costs.

09. In view of the pleadings of both parties, material produced on record and arguments advanced at bar and also considering the legal provisions, following points arise for my determination. I have recorded my findings thereon for the reasons given herein below.

Sr. No	<u>Points</u>	<u>Findings</u>
[i]	Whether the plaintiff has made-out prima-facie case?	Yes.
[ii]	Whether balance of convenience tilts in favour of the plaintiff?	Yes.
[iii]	Whether the plaintiff will suffer irreparable loss, if injunction is refused?	Yes.
[iv]	What Order?	Application is allowed against defendant no.1.

REASONS**AS TO POINT NOS. 1 TO 3:**

10. Above all points are inter-linked with each other therefore, in order to avoid repetition of facts and for the sake of convenience, I discuss and decide them together.

11. At the outset, it is admitted inter-alia about the execution of development agreement dt. 09/11/2020 between defendants and also the fact of doing construction & development business of immovable properties by the defendant no.1.

12. Plaintiff asserted that defendant no.1 authorized to enter into contract to sell the suit property vide agreement dt. 09/11/2020 so, he executed agreement-to-sell of suit property in favour of plaintiff by accepting amount of Rs.10,00,000/- & agreed to pay the rest of sale consideration amount on the date of execution of sale-deed. They further agreed that till then, defendant no.1 will complete the construction work of suit property. Per contra, defendant no.1 has denied the said fact by taking specific defence that plaintiff is doing money lending business and he lent amount of Rs.10,00,000/- on interest & got executed false & bogus document of agreement-to-sale. In fact, no any contract of contract of sale took place between them.

13. To buttress the plaintiff's case, he relied on Notarized development agreement dt. 09/11/2020. From the recitals of page no.2, it prima facie appears that defendant no.2 authorized defendant no.1 to sell the suit property. Said document & its contents admitted by the defendants. Moreover, from the recitals of Notarized agreement-to-sale dt. 09/11/2020 executed by the defendant no.1, it prima facie proves

that defendant no.1 entered into contract to sell the suit property to the plaintiff for consideration of Rs. 16,57,000/- & out of which, he received the amount of Rs.10,00,000/- being earnest money. Per contra, to wash out the plaintiff's application, defendant did not bring any record to prima facie show that plaintiff is doing money lending business so, he availed the amount of Rs.10,00,000/- for the development of suit property. Had it been a fact that he availed amount of Rs.10,00,000/- for his business and not entered into contract to sell the suit property then, he might have lodged complaint against him or might have averred the said facts in his reply notice. But, defendant no.1 did not act accordingly. Contrary, he admits the fact of entering into contract to sell the suit property with plaintiff in his reply notice sent by his ld. advocate shri. V.R. Naik. Thus, there appears to be no substance in the contention of the defendant.

14. Further more, in order to prove the facts of composition, defendant no.1 did not produce any record to show that by what mode, he paid amount of Rs.10,00,000/- to the plaintiff vide pursis. The plaintiff has denied the said pursis in toto. In such scenario, at this stage I am of the view that the questions as to whether their composition took place wherein, plaintiff agreed to withdraw the suit or not? Whether agreement-to-sell dt. 09/11/2020 is not liable to be considered in evidence? Whether withdrawal pursis is bogus or not? Whether defendant no.1 availed money of Rs.10,00,000/- for his business? Whether the plaintiff is doing money lending business? are all the questions, which is required to be appreciated with the help of evidence in trial so, on these unanswered questions, application can not be rejected at thresh-hold.

15. Per contra, record reveals that during pendency of this suit, defendant no.1 purchased the suit property from defendant no.2 vide registered sale-deed bearing no.4486/2023 dt.14/08/2023. Defendant no.2 admits the said fact & also creation of the ownership & occupancy of defendant no.1 over the suit property so, it seems that now defendant no.1 got the full fledged legal right, title over the suit property after executing the agreement-to-sell dt.09/11/2020. Moreover, the fact of execution of agreement-to-sell dt.09/11/2020 in the name of plaintiff is admitted by the defendant no.1 in his reply notice. It means the right of plaintiff is created and also involved in the suit property. In such case, his right is required to be protected till the final adjudication of the suit. Moreover, from the recitals of reply notice issued by the defendant no.1, it prima facie seems that defendant no.1 is not ready & willing to execute the sell-deed as agreed between them. This apart, they have not averred that apprehension of the plaintiff regarding alienation are baseless. Property card of suit property is on record. The name of defendant no.1 is mutated in record of rights by virtue of sale-deed bearing no.4486/2023 and said property is now standing in the name of defendant no.1, who is now become absolute owner & possessor of suit property. So I am of the view that apprehension of the plaintiff is prima facie appeared to be genuine and correct only against defendant no.1. Thus, it would be just and proper to protect the right of plaintiff involved in the suit property till the final adjudication of the suit.

16. Having taken into account submissions and material, I hold that plaintiff has made out such a case to convince the court to come to the conclusion that irreparable injury is going to be caused to him which

cannot be properly compensated in damages, if the defendant no.1 is not restrained from creating third party interest.

17. Thus, The plaintiff's case has shown well founded on the point of apprehension regarding alienation. Obviously, if defendant no.1 is created third party interest certainly, irreparable loss would cause him. He will not enjoy the fruits of the decree in case, he succeeds in the suit. The factors of and balance of convenience and irreparable loss are also in favour of the plaintiff. On the other hand, there would be no hardship to the defendant no.1, if he is restrained from alienating the suit property till conclusion of the suit. On the other hand, there is nothing on record to show that defendants will suffer irreparable loss if he is not allowed to alter the situation of suit property. So, in order to avoid the multiplicity of proceedings and to maintain the present situation of suit property, plaintiff is entitled for discretionary relief of temporary injunction to restrain defendant no.1 from alienating suit property. In the light of aforesaid discussion, point no. 1 to 3 are answered in affirmative against defendant no.1.

AS TO POINT NO.4:

18. In view of my findings recorded to points 1 to 3, the application Ex.5 deserves to be allowed against defendant no.1. The costs of this application may leave to be considered at the time of adjudication of the costs of entire litigation. In the conclusion, I pass the following order.

ORDER

- [i] The application [Exhibit-5] is allowed against defendant no.1.

- [ii] The defendant no.1 or any body claiming on his behalf shall temporary restrained from alienating or transferring suit property in any manner by any one else till final disposal of suit.
- [iii] Costs in main cause.

Date : 17.08.2024

(Sunita P. Paithankar)
3rd Jt. Civil Judge S.D., Jalna