

MHKO070006342019



ORDER PASSED BELOW EXH. 5

1] By way of this application, plaintiff has prayed to restrain defendant from alienating suit property (of which detail description is given in para 1 of the application and same is herein after referred as 'suit property').

2] **Facts of application in short are as under -**

Suit property is owned and possessed by defendant. Defendant was in need of money and therefore, he agreed to sale agricultural land out of Block No. 219 situated at village Jainapur to the plaintiff for valid consideration of Rs. 10,51,000/-. On the date of agreement itself an amount of Rs. 25,000/- was paid by the plaintiff as a earnest amount. Remaining amount was to be paid as per terms given in agreement. It was further stated in the agreement that, if for any reason execution of sale deed of land from Jainapur has not completed, in that case sale deed of land situated at Umalwad i.e. suit property is to be executed for consideration of Rs. 4 lac. Sale deed was to be executed within 90 days from the date of permission obtained by the defendant from the Collector for

execution of sale deed. Defendant was supposed to clear all the loan amounts, of which charge is kept over suit property. From time to time plaintiff made request to defendant to execute sale deed of property from Jainapur. However, on 15/10/2019 plaintiff shown inability to execute sale deed of suit property and agreed to execute sale deed of suit property situated at Umalwad. Defendant has received an amount of Rs. 4,50,000/- from the plaintiff against the said transaction but, he has avoided to execute sale deed. Therefore, plaintiff issued notice to defendant to execute sale deed but, defendant failed to keep his promise. On 27/12/2018 plaintiff obtained 7/12 extract of suit property in order to file suit and at that time he found that, on 16/02/2012 defendant No.1 has executed sale deed of suit property in favour of defendant No.3. So also defendant No.3 has mortgaged said property for 10 years with defendant No. 2 on 23/06/2014. All these transactions are not binding on the rights of plaintiff. Therefore, by way of this application he has prayed to restrain defendant from creating further third party interest in the suit property.

3] Defendant No.1 filed his say and opposed to allow this application. He has denied execution of agreement of sale deed in favour of plaintiff. He further contended that, suit is not within limitation. Said agreement is also illegal in the eyes of law if consideration amount decided between the parties is Rs. 4 lac, then

defendant had no reason to pay Rs. 4,50,000/- to the plaintiff.

4] Defendant No.2 did not file his say hence, suit proceeded ex-parte against him.

5] Defendant No.3 filed his say at exh.21 and opposed to allow this application. According to her she has purchased said property from the plaintiff on 16/2/2012 for valid consideration of Rs. 7,05,000/- and she has further mortgaged said property with defendant No.2 for the period of 10 years. She has no knowledge regarding any agreement between plaintiff and defendant No.1. She is bonafied purchaser for value without notice. Hence, prayed for rejection of application.

6] Heard both side gone through record. Considering rival contentions of both parties, following points arise for my determination and I have recorded my findings thereon along with detailed reasons to follow.

Sr.No	Points	Findings
1.	Whether plaintiff has made out prima facie case in his favour ?	... In the affirmative
2.	Whether balance of convenience lies in favour of plaintiff ?	... In the affirmative

3.	Whether plaintiff will suffer irreparable loss, if injunction is not granted in his favour?	... In the affirmative
4.	What order?	As per final order.

REASONS

As to point Nos.1 to 3 :-

7] Heard both side and gone through record. Defendant No.1 has denied execution of agreement, however from perusal of original agreement filed on record it appears that, stamp of agreement is purchase by the defendant No.1. It bears his signature. In such circumstances, at this stage it can not be said that, defendant No.1 has not executed said agreement in favour of plaintiff. Defendants have seriously argued regarding description of suit property in the agreement. Basically agreement is executed in respect of property situated at Jainapur i.e. Block No. 219. For any reason execution of sale deed of that property is not completed or has become impossible, in that case sale deed of suit property was to be executed for valid consideration of Rs. 4 lac. It is contention of plaintiff that, defendant has informed him that, sale deed of land from Jainapur is not possible. According to plaintiff, in that case plaintiff has become entitled to get executed sale deed of suit property. Learned Advocate for plaintiff has further argued that, it is the case of contingent contract. As per section 33 of Indian Contract

Act, contingent contract to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

8] Learned Advocate for defendants has argued that said agreement itself is illegal and it can not be enforced. Therefore, plaintiff is not entitled to relief of injunction on the basis of said agreement.

9] Whether agreement is legal or not, can be decided at the conclusion of trial. At this stage prima facie it appears that, agreement is executed by defendant No.1 in favour of plaintiff. Prima facie there is nothing to show that, suit is barred by limitation. Already defendant No.3 has mortgaged said property with defendant No.2 for 10 years. Therefore, no any loss or prejudice will cause to defendant, if they are restrained from making further alienation of suit property. I find there is prima facie case and balance of convenience in favour of plaintiff. If application is rejected there is chances of alienation of suit property by the defendants. In that case plaintiff will suffer irreparable loss. Therefore, defendants required to be restrained from making further alienation of suit property. In result, point No. 1 to 3 are answered in the affirmative and in answer to point No.4, I proceed to pass following order.

ORDER

1. Application is allowed.
2. Defendants are restrained from alienating suit property in any manner till disposal of this suit finally.

Sd/-

(K.G. Sawant)

Civil Judge Senior Division,
Jaysingpur.

Date : 13/03/2020.