

MHKO070007292022



Special Civil Suit No.33/2022.

Shri. Babaso Hariba Kamble.

Vs

Smt. Shantabai K. Teli and anr.,

Order below Exh.5 in Special Civil Suit No.33/2022.

The plaintiff has instituted a suit for specific performance of agreement to sell, declaration and for permanent injunction wherein he has filed the present application under Order XXXIX, Rule 1, 2 of the Code of Civil Procedure, 1908, for a temporary injunction restraining the defendants from alienating the suit property to third persons and also restrained from causing obstruction to his possession over the suit property.

2. Facts of the plaintiff's case are as under –

Description of the suit property- The agricultural land bearing Gat No.1113, ad-measuring 2 hectare 05 Are, out of it, 40 Are land situated at village Ghosarwad, Tal. Shirol, Dist. Kolhapur, which is bounded as follows:-

Towards East :- Property of Shri. Irappa Dakku.

Towards West :- Property of Shri. Bandu Shirdhone.

Towards South :- The property of Dhondubai Shinge and others.

Towards North :- Common road.

is the disputed property in the present suit. (Hereinafter, referred to as "the suit property")

3. According to the plaintiff, the suit property is the ancestral property of defendant Nos. 1 to 5. The said property was originally allotted to the predecessor-in-title of the defendants, namely Krushna

Shiva Teli, as a “project-affected person” under the Dudhganga Dam Project. In the year 1996, Krushna Teli was in need of money for the welfare of his family and due to financial difficulties. Therefore, he agreed to sell the suit property to the plaintiff and, accordingly, on 27.09.1996, executed an agreement to sell of the suit property in favour of the plaintiff for a consideration of ₹72,000/-. Out of the said consideration, the plaintiff paid an advance amount of ₹40,000/- to him. On the same day, he also transferred possession of the suit property in favour of the plaintiff.

4. The plaintiff has further alleged that, in order to alienate the suit property, it was necessary to obtain prior permission from the competent authority. Accordingly, Krushna Teli agreed to obtain the said permission and further undertook to execute the sale deed within a period of one month from the date of obtaining such permission. The plaintiff agreed to pay the remaining consideration of ₹32,000/- at the time of execution of the sale deed. It was further agreed that, if delay is caused to obtain permission, the plaintiff would pay the balance consideration of ₹32,000/- after the lapse of one and a half years from 27.09.1996. The plaintiff has further alleged that Krushna Teli failed to obtain the required permission until April 1998. Consequently, on 29.04.1998, the plaintiff paid the remaining consideration of ₹32,000/- to him. On the same day, Krushna Teli executed a further agreement of sale in favour of the plaintiff and confirmed the plaintiff’s possession over the suit property. According to the plaintiff, he has always been ready and willing to perform his part of the contract and was also ready to bear and deposit the requisite fees for obtaining permission from the competent authority. However, Krushna Teli failed to obtain such permission. The plaintiff has been in continuous possession of the suit property since 1996 and has, therefore, developed the same.

5. In the year 2013, Krushna Teli demanded additional consideration for the sale of the suit property. The plaintiff agreed to pay the enhanced consideration. Consequently, on 01.07.2013, Krushna Teli executed a registered agreement to sell, bearing No. 3007, in favour of the plaintiff. Under the said agreement, he agreed to sell the suit property for a total consideration of ₹7,60,000/-. Out of the said amount, the plaintiff paid ₹7,50,000/- in cash to Krushna Teli and agreed to pay the remaining amount of ₹10,000/- at the time of execution of the sale deed. According to the plaintiff, he has been in possession of the suit property since 27.09.1996. However, due to technical reasons, the factum of possession was not recorded in the said registered agreement to sell. However, on the same day, Krushna Teli executed a registered power of attorney in favour of the plaintiff, bearing No. 3008, authorizing him to obtain the requisite permission for execution of the sale deed. In the said power of attorney, Krushna Teli acknowledged the possession of the plaintiff over the suit property. Thereafter, Krushna Teli expired, as a result of which it became difficult for the plaintiff to obtain permission from the competent authority. The plaintiff, therefore, requested defendant Nos. 1 to 5, being the legal heirs of the deceased Krushna Teli, to obtain the requisite permission and execute the sale deed in terms of the agreement to sell. Although they initially expressed willingness to execute the sale deed upon obtaining such permission, they ultimately avoided performing their part of the contract.

6. In February 2020, defendant Nos. 1 to 5 attempted to alienate the suit property to a third party. Consequently, on 16.02.2020, the plaintiff published a public notice in the newspaper *Dainik Mahankarya*, Shirol, cautioning against such alienation. Thereafter, on 17.02.2020, the plaintiff filed an application before the Sub-Registrar,

Shirol, requesting that the defendants be directed not to alienate the suit property without his prior permission. However, on 11.03.2022, defendant Nos. 1 to 5 executed a registered sale deed bearing No. 1478/2022 in favour of defendant No. 6 in respect of the suit property. Hence, the plaintiff has filed the present suit seeking specific performance of the contract, along with reliefs of declaration and permanent injunction. By way of the present application, the plaintiff prays for a temporary injunction restraining the defendants from further alienating the suit property in favour of third parties and from causing any obstruction to the plaintiff's possession over the suit property.

7. Defendant No. 1 has filed her written statement at Exh. 26. Defendant Nos. 2 to 5 have filed a pursis at Exh. 28, adopting the written statement filed by defendant No. 1. They have denied all the adverse allegations made by the plaintiff. According to the defendants, the suit property was allotted not only to their predecessor-in-title, namely Krushna Teli, but also to them, and accordingly, Mutation Entry No. 1718 came to be effected. The said property was allotted to the family of defendant Nos. 1 to 5 along with Krushna Teli. Therefore, Krushna Teli had no exclusive right to alienate the entire suit property. On this ground, defendant Nos. 1 to 5 contend that the alleged agreement to sell is illegal. They have further contended that the suit property was allotted to them as "project-affected persons" and, therefore, could not have been alienated without prior permission of the competent authority. However, no such permission was obtained prior to the execution of the alleged agreement to sell. Hence, according to them, the said agreement is void ab initio. The defendants have also contended that there was no legal necessity for their family to sell the suit property and, therefore, the alleged agreement to sell is not

binding upon them. They have further asserted that the plaintiff has failed to aver and prima facie establish that he has always been ready and willing to perform his part of the contract. Consequently, the plaintiff is not entitled to the reliefs as claimed. On these grounds, they have prayed to reject the application.

8. Defendant No.6 has not filed his say to present application. Hence, application proceeded without his say.

9. Heard Shri.J. J. Pomaje, learned advocate for the plaintiff and Shri. B. H. Deshmukh-Patil, learned advocate for the defendant Nos.1 to 5.

10. Perused the application of the plaintiff, say filed by the defendants as well as documents filed on record. The following points arise for determination, and I have recorded my findings thereon for reasons mentioned herein.

Sr. No.	Points	Findings
1.	Whether the prima-facie case is in favour of the plaintiff ?	Yes.
2.	Whether balance of convenience lie in favour of the plaintiff ?	Yes.
3.	Whether irreparable loss will be caused to the plaintiff, if injunction is not granted ?	Yes.
4.	What order ?	As per final order.

REASONS

AS TO POINTS NO.1 TO 4: -

11. Learned advocate for the plaintiff has submitted that defendant Nos. 1 to 5 had executed an agreement to sell of the suit property in

favour of the plaintiff and he has been in possession thereof. However, defendant Nos. 1 to 5 have subsequently sold the suit property to defendant No. 6 and are causing obstruction to his possession. The plaintiff further apprehends that the defendants may again alienate the suit property. On the contrary, the learned Advocate for the defendants has submitted that the suit property is an Occupancy Class II land, which was allotted to Krushna Teli as a “project-affected person”. Therefore, the property cannot be alienated without prior permission of the competent authority. It is further contended that Krushna Teli was not the exclusive owner of the suit property, as the same was allotted jointly to defendant Nos. 1 to 5 along with him. Thus, he had no right to alienate the same. The defendants have also contended that the plaintiff is not in possession of the suit property. Hence, they have prayed for rejection of the application.

12. In order to establish that defendant Nos. 1 to 5 had executed an agreement to sell of the suit property in his favour, the plaintiff has relied upon the agreement to sell dated 01.06.2013. Upon perusal of the said document, it appears that the same was executed by Krushna Shiva Teli in favour of the plaintiff and is duly registered in the office of the Sub-Registrar, Shirol. Furthermore, Krushna Teli had agreed to sell the suit property to the plaintiff for a consideration of ₹7,50,000/-. Therefore, prima facie, it appears that Krushna Teli had executed an agreement to sell of the suit property in favour of the plaintiff.

13. Admittedly, the suit property is an Occupancy Class II land. The learned Advocate for the defendants has submitted that, in view of Section 29(3) of the Maharashtra Land Revenue Code, 1966, such land cannot be transferred without prior permission of the competent authority, and therefore, the alleged agreement to sell is void ab initio.

However, it is well settled that an agreement to sell does not, by itself, create or transfer any right, title, or interest in immovable property. It is merely a contract for a future sale and confers a right upon the purchaser to seek specific performance. Therefore, an agreement to sell cannot be construed as a “transfer” within the meaning of Section 29(3) of the Maharashtra Land Revenue Code, 1966. In view of the above, prior permission of the competent authority is not necessary for the execution of an agreement to sell in respect of Occupancy Class II land. Hence, it cannot be held, at this stage, that the agreement to sell dated 01.06.2013 executed in favour of the plaintiff is void ab initio.

14. Furthermore, the question of prior permission to execute the agreement to sell regarding the land of occupancy class II was arose in the case of **Sitaram Ganu Mhaskar and Anr. v. Keshav Ramchandra Shelor, 2001(4) ALL MR 116**, wherein the Hon’ble Bombay High Court has held that-

In my opinion, the observations of the learned single Judge are contrary to the clear words used in section 43. **What cannot be done without previous sanction of the Collector, is transfer of the land** by sale, gift, exchange, mortgage, lease or assignment. An agreement of sale is not a transfer. It is a settled law that an agreement of sale does not transfer any interest in the land. Therefore, in my opinion, the observations of the learned single judge of this court being contrary to the provisions of section 43 of the Act, are per-incuriaum and therefore, have no binding force.

A similar view has been reiterated by the Hon’ble Bombay High Court in **Kalandi Baburao Raut & Others v. Dattu Damu Thakare, 2008(6) ALL MR 327**. In view of the ratio laid down in the cases (cited supra), it is clear that the prior permission of the competent authority for executing the agreement to sell is not necessary even if the agreed land is of occupancy class II land. Therefore, there is no merit in the contentions

of the defendants that the alleged agreement to sell is void and ab initio.

15. In view of above discussion, prima facie it appears that Krushna Teli had executed agreement to sell of the suit property in favour of the plaintiff. It is alleged by the defendant Nos.1 to 5 that Krushna was not the sole owner of the suit property. According to them, the suit property was allotted to them as well as to Krushna. However, the defendants have not produced any documentary evidence to substantiate the said contention. Per contra, on perusal of mutation entry No. 1718 annexed with sale deed of defendant No. 6, it appears that the suit property was allotted only to Krushna. Hence, it cannot be held that Krushna had no right to execute the agreement to sell of the whole suit property in favour of the plaintiff. Moreover, as pleaded by the defendants, they have failed to prima facie prove that Krushna was illiterate and was not able to understand about his welfare. Furthermore, the defendants have failed to bring on record that he had habit of a drinking liquor. Therefore, there is no merit in the said contentions of the defendants. Hence, it is clear that Krushna had duly executed agreement to sell in favour of the plaintiff.

16. The plaintiff has claimed possession over the suit property. In order to prove the said fact, he has relied on the agreement to sell dated 27.09.1996, unregistered sale agreement dated 29.04.1998 as well as the registered power of attorney dated 01.07.2013. On perusal of agreement to sell dated 27.09.1996 and the unregistered sale agreement dated 29.04.1998, it appears that it was executed by Krushna Teli in favour of the plaintiff regarding the suit property wherein it is mentioned that possession of the suit property was handed over to the plaintiff. However, both the documents are not duly

stamped. Hence, it cannot be used as a evidence to prove possession of the plaintiff. Therefore, on the basis of said documents it cannot be held that the plaintiff is in possession of the suit property. However, in the power of attorney dated 01.07.2013, which was executed by Krushna Teli in favour of the plaintiff it is specifically written that the suit property is in possession of the plaintiff. Thus, prima facie it appears that Krushna has admitted in the alleged power of attorney that the plaintiff is in possession of the suit property. The defendants have not explained the said admission in their written statement. Therefore, defendant Nos.1 to 5 being the legal heirs of deceased Krushna, his alleged admission is binding on them and thereby estopped from denying the plaintiffs possession. Hence, it is clear that the plaintiff is in possession of the suit property.

17. The learned advocate for the defendants has submitted that in the agreement to sell dated 01.07.2013 it was recited that possession of the suit property would be delivered at the time of execution of the sale deed. Therefore, it is argued, the recitals of the power of attorney cannot be relied upon to infer that the plaintiff was in possession of the suit property. However, it is evident that even if both the deeds were executed and registered on the same day, power of attorney was executed and registered after execution and registration of agreement to sell. Moreover, defendant Nos. 1 to 5 have not produced any documentary evidence to demonstrate that they are in actual possession of the suit property on the date of filing the suit. It also appears that defendant No. 6, who purchased the suit property, has neither appeared nor disputed the plaintiff's contentions regarding possession. Therefore, it is clear that there is no merit in the submission of the defendants.

18. On perusal of the agreement to sell dated 01.07.2013, it appears that the plaintiff had agreed to purchase the suit property for a consideration of ₹7,60,000/-, out of which he had already paid ₹7,50,000/- to Krushna Teli. This indicates that the plaintiff has paid a substantial portion of the consideration to Krushna. It demonstrates that the plaintiff has always been ready to perform his part of the contract. It further appears that on 01.07.2013, Krushna Teli executed a power of attorney authorizing the plaintiff to obtain the requisite permission from the competent authority to sell the suit property. However, subsequently, Krushna Teli passed away. Both parties have, however, failed to place his death certificate on record. Thereafter, according to the plaintiff, he approached defendant Nos. 1 to 5, for seeking their cooperation in obtaining permission from the competent authority and executing the sale deed as per the agreement. However, the defendants avoided performing their obligations. Furthermore, the plaintiff published a notice in the newspaper *Dainik Mahankarya*, Shirol, asserting his right to purchase the suit property. The conduct of the plaintiff, prima-facie, demonstrates that he has at all times been ready and willing to perform his part of the contract.

19. In view of the foregoing discussion, it is evident that the deceased Krushna Teli had executed an agreement to sell of the suit property in favour of the plaintiff, and possession of the same has been handed over to him. It also appears that defendant Nos. 1 to 5 have transferred the suit property to defendant No. 6 by way of a sale deed. Consequently, the possibility of further alienation of the suit property by the defendants cannot be ruled out. Therefore, to prevent multiplicity of judicial proceedings, it is legal and proper to restrain the defendants from alienating the suit property to third parties. Furthermore, as noted above, the plaintiff is in possession of the suit

property, and any obstruction caused by the defendants to such possession would result in irreparable loss to the plaintiff. Therefore, it is necessary to protect the possession of the plaintiff until the final decision of the suit.

20. Learned Advocate for the defendants has relied on S. P Subramanya Shetty & Ors. v. K.S.R.T.C. and Ors., decided on 26.03.1997, 2. State of Bihar v. Dharendra Kumar & Ors., 1995 AIR 1955, 3. The Commissioner, Bangalore Development Authority & anr., v. Brijesh Reddy & anr., Civil Appeal No.1051 of 2013 decided on 08.02.2013. In all the cases, the notification issued under Land Acquisition Act was challenged before civil court and in such facts it is held that the suit is not maintainable in civil court. However, in present case no such notification is challenged. Hence, the ratio laid down in the said cases is not helpful to the defendants. He has also relied on ratio laid down in Hari Shiva Patil v. Sadashiv Krishnaji Kulkarni, Civil Revision Application No.154 of 2017 decided on 26.02.2018. The plaintiff, in that case had prayed for declaration that land acquisition map prepared by Collector was void-ab-initio. In view of the said prayer, it was held that the civil court has no jurisdiction to entertain the suit. Therefore, the ratio laid down in the said case is not helpful to the defendants. Learned Advocate for the defendants has also relied on Shri. Dadu Rama Patil vs Shri Bapu Krishna Kurane, Civil Revision Application No.981 OF 2012, decided on 20-03-2014, wherein the plaintiff had challenged the acquisition of land done under the Maharashtra Project Affected Persons Rehabilitation Act, 1986. Hence, it was held that the civil court has no jurisdiction to entertain the suit. In the present case, the plaintiff has not challenged such acquisition. Therefore, ratio laid down in that case is not helpful to the defendants.

21. In view of above discussion, it is clear that prima facie case and balance of convenience lies in favour of the plaintiff. Furthermore, if the injunction as prayed by the plaintiff is not granted then irreparable loss will be caused to him. Therefore, the application deserves to be allowed. Hence, I answer points No.1 to 3 in the affirmative, and for point No.4, I pass following order.

ORDER

1. The application (Exh.5) is allowed.
2. The defendants are hereby restrained from causing obstruction to the possession of the plaintiff over the suit property and also restrained from alienating the suit property till final disposal of the present suit.
3. Cost in cause.

Jaysingpur.
Date: 09.04.2026.

(P A. Patil)
Jt. Civil Judge Senior Division,
Jaysingpur.