

MHKO070012772020



Swapnaj Suresh Samarai  
V/s.  
Devgonda Nemgonda Patil and others

**ORDER PASSED BELOW EXH. 5**

1] This application is filed by plaintiff under Order 39 Rule 1 and 2 of Code of Civil Procedure, seeking injunction restraining defendants No. 1 and 2 from creating any third party interest in respect of property in dispute mentioned in plaint para No. 1(a) and (b), by any mode or manner as well charge over it till disposal of suit.

2] Plaintiffs case in short is that, defendant No.1 was owner and in possession of the properties which are mentioned in para No. 1(a) and (b) of the plaint which are in dispute and will be hereinafter referred as "suit property" for the sake of convenience.

3] According to plaintiff, he is in an agriculturist having intention to acquire some additional agricultural or immovable

properties within the vicinity of Jaysingpur. Therefore, he was in search of any such property. On his search he found that, defendant No.1 is interested to sale his properties i.e. the suit property. Therefore, plaintiff met with defendant No.1 and it was agreed between them that, defendant No.1 will sold suit properties (both) for total consideration of Rs. 10 lacs.

4] Accordingly as per terms agreed between the parties on 3/2/2017, defendant entered into an agreement to sale dtd. 3/2/2017 bearing No. 268 before Notary Public. Sale consideration was agreed to be Rs. 10 lacs. Earnest amount of Rs. 5 lac was paid by plaintiff to defendant No.1 at the time of execution of agreement to sale in presence of witnesses and it was agreed that, remaining sale consideration of Rs. 5 lacs will be paid at the time of exeuction of sale deed. The said agreement to sale will be hereinafter referred as "suit agreement" for sake of convenience.

5] Though it was agreed that, sale deed has to be executed within six months from agreement to sale, the defendant No.1 failed to execute it within time as per terms of agreement.

6] According to plaintiff, inspite of repeated oral as well as written requests by him, defendant No.1 failed to comply the conditions mentioned in agreement to sale and execute sale deed

within time by obtaining permission from competent authority for sale as is required. On the contrary, defendant No.1 sold 0.08R. area out of total area of suit property 1B, in favour of defendant No.2 on 19/4/2018. Plaintiff got knowledge about above sale deed in the month of January-2020. On inquiry defendant No.1 failed to give any justifiable reason for said sale deed.

7] According to plaintiff, defendant No.1 has executed sale deed dtd. 19/4/2018 bearing no. 2038 of 2018 in respect of 0.8R. out of suit property 1B in favour of defendant No.2 instead of his previously executed suit agreement to sale dtd. 3/2/2017 in favour of plaintiff. The said sale deed is void and illegal.

8] According to plaintiff, defendant Nos. 1 and 2 are again trying to create third party interest in respect of the suit properties by its alienation or creating any charge over it. If defendant Nos. 1 and 2 will succeed in their act, the entire purpose of suit will be frustrated. Hence, this application.

9] After issuance of notice, defendant No.1 as well defendant No.2 appeared and resisted the claim of plaintiff by way of their detail say to the instant application inclusive of their written statement. According to them, the suit is not withing limitation. It is not properly valued and sufficient court fees is not paid by plaintiff.

Hence, they sought for dismissal of instant application as well suit on merits.

10] Defendant No.1 denied execution of suit agreement to sale as well receipt of earnest amount as alleged by plaintiff. According to him, plaintiff has misused the stamp paper dtd. 19/12/2016 for preparing false and forged agreement to sale dtd. 3/2/2007. No any suit agreement was executed or earnest amount of Rs. 5 lac was received by him from the plaintiff. Plaintiff is a money lender. He is doing illegal money lending and therefore, C.R.No. 205/20 is registered with police station Jaysingpur under provisions of Prevention of Money Lending Act on the complaint of victims therein.

11] According to defendant No.1 he was in financial need in the year 2016. As plaintiff is a moneylender, defendant No.1 approached him and obtained hand loan of Rs. 50,000/- towards security of said hand loan. The said stamp paper bearing dtd. 19/12/2016 is misused by plaintiff showing that, it is agreement to sale dtd. 3/2/2017. Infact defendant No.1 had paid entire handloan of Rs. 50,000/- alongwith interest thereon i.e. total amount of Rs. 85,000/- to the plaintiff in presence of witnesses. After repaying of said hand loan he repeatedly requested to plaintiff to return said blank stamp paper but, plaintiff refused for the same and misused

the said stamp paper for filing present suit.

12] According to defendant No.1, the boundaries of the property which is purchased by him, from defendant No.1 on the basis of sale deed on 16/4/2018 are not in accordance with the boundaries of suit property 1B mentioned in agreement to sale dtd. 3/2/2017 as well present suit and application. Therefore, plaintiffs suit as well present application is not maintainable for want of proper description and location of the suit property.

13] According to defendant No.2 he is having no any concern with the property of Gat No. 270. Defendant No.1 sold said portion of suit property in favour of defendant No.2 on 16/4/2018 as plaintiff has failed to pay remaining sale consideration within time i.e. till 3/8/2017 as agreed in suit agreement to sale dtd. 3/2/2017. As time was essence of contract, plaintiffs failure to perform his part till 3/8/2017 dis entitles plaintiff from filing present suit for specific performance of said contract and for interim relief of injunction as prayed by him in present application.

14] According to defendant No.2 he has purchased said portion of suit property by paying huge consideration and by way of registered sale deed. Plaintiff has not sought cancellation of said sale deed till today. Thus, defendant No.2 is owner on the basis of

registered sale deed executed by defendant No.1 in his favour. Plaintiff is neither entitled for relief of specific performance of contract claimed in main suit nor relief of interim injunction as prayed. Hence, he prayed to reject the application.

15] Heard both sides. Gone through record. Considering rival contentions of both parties, following points arise for my determination which I have recorded my findings thereon along with detail reasons to follow.

<b>Sr.No</b>	<b>Points</b>	<b>Findings</b>
1.	Whether plaintiff has made out prima facie case in his favour ?	<b>.. Partly affirmative to the extent of alienation.</b>
2.	Whether balance of convenience lies in favour of plaintiff ?	<b>.. Partly Affirmative.</b>
3.	Whether plaintiff will suffer irreparable loss, if injunction is not granted in his favour ?	<b>.. Partly Affirmative.</b>
4.	What order?	<b>As per final order.</b>

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

16] In order to establish their contentions both parties relied on various documents as well oral submission. The copy of suit agreement dtd. 3/2/2017 is at Sr. No. 3 of list Exh.3. The 7/12 extract of suit properties are at Sr. No. 1 and 2 while office copy of notice dtd. 19/6/2018 and postal acknowledgment dtd. 20/6/20-18 and 22/6/2018 are at Sr. Nos. 4, 5 and 6 of list Exh.3. The copy of sale deed dtd. 19/4/2018 executed by defendant No.1 in favour of defendant No.2 is at Sr.No.7 of list Exh.3.

17] All above documents are prima facie showing that, both suit properties were owned and possessed by defendant No.1 prior to suit agreement to sale and sale deed. Both agreement to sale at Sr.No.3 and sale deed at Sr. No.7, are executed before Notary public and Sub Registrar, Shirol respectively. Both of them bears seal and signature of the concerned authorities, alongwith endorsement and Serial number of execution of those documents in their office record. Both documents bears signature of executant as well witnesses to alleged transactions.

18] According to defendants, said agreement to sale is forged one. It's contents are contrary to plaint as well pre-suit notice by

plaintiff. The transaction is of money lending and defendant No.1 has already repaid entire amount of hand loan alongwith interest therein to plaintiff before witnesses. So plaintiff not entitled for main relief in suit itself, so no question for granting injunction arose.

19] Moreover, according to defendant No.2, he is third party purchaser, having value without notice. He, defendant No.2 is owner of said portion of suit property, by way of registered sale deed. Thus, is having better title than that of, plaintiff. Hence, no injunction can be granted against him.

20] Rooted in the principles of goodwill, equity, good conscience and based on legal principle, "Ubi jus, ibi remedium" meaning that where there is a right, there is remedy, an injunction is an equitable remedy.

21] While dealing with application for injunction the present court has to see whether plaintiff coming before court alleging the invasion or threat at the hands of defendants of any wrongful act. Court has to see whether plaintiff has established all above referred three principles in his favour.

22] This court can restrain defendants from doing such act of further alienation or creation of charge over suit property, only if

plaintiff establish that any alleged injury to his rights is going to be caused which can not be adequately compensated in damages by court.

23] If plaintiff can be compensated in damages recoverable in the action, if the uncertainty will be resolved in his favour at the trial, then no any need to maintain status quo of the parties with regards to the suit property, during pendency of suit.

24] The plaint shows that, there are number of cases pending against plaintiff with concern police stations under provisions of Prevention of Money Lending Act. The contents of terms of agreement/consideration are different in plaint, application in hand and pre suit notice by plaintiff. Para No.2 of present application is contrary to para No.3 and 4 of suit agreement. Though it is alleged by plaintiff that he paid such huge earnest amount, no any details of said payment either averred in pleadings or produced on record to establish it, at least prima facie for deciding the instant application.

25] In present case plaintiff has not brought on record the payment of such huge earnest amount, also failed to explain delay in sending notice for performance of agreement to sale. However, the case of plaintiff atleast to the extent of execution of suit agreement to sale by defendant No.1 before Notary is prima facie established by

plaintiff. Plaintiff by bringing on record original copy of notarized suit agreement to sale, which bears signature of defendant No.1 has proved it's execution. It is presumption atleast to the extent of execution of it, on said date before Notary Public.

26] Defendant No. 1's theory of forged and false preparation of suit agreement can be decided during trial. Whether plaintiff had paid alleged earnest amount and is ready and willing to perform his part of contract, only can be decided during trial. If till decision of suit, defendants create third party interests in suit property, unnecessary third party interests will be created which will cause more complications during trial as well at the time of execution.

27] Whether the plaintiff is doing illegal money lending and suit transaction is one of such illegal money lending can be decided only after trial. As present defendant No.1 has not filed any complaint with any police station alleging that suit transaction is of such nature, so merely on the basis of allegations that other persons complaints are pending on plaintiff, at this juncture it can not be held that present transaction is of money lending. It can not be held that, plaintiff has misused blank stamp paper kept by defendant No.1 for security of hand loan, and prepared notarized suit agreement to sale. All the defences about falsehood of suit agreement to sale have to be adjudged during trial.

28] At this juncture, plaintiff coming before court with notarized agreement to sale bearing sign of defendant No.1, is sufficient to hold that suit agreement was executed between parties. Thus, till decision of suit, the nature of suit property is required to be preserved as it is. If it will be preserved by granting injunction for alienation against both defendants, they will not suffer any loss or harm. On the contrary, if will not be granted, it will unnecessary create multiplicity of proceedings and unnecessary complications during the trial as well execution of decree. Hence, I answer point No. 1 accordingly.

**AS TO POINT NOS. 2 and 3**

29] As I have discussed above that possession of suit property is with defendants as on today. The suit property is an agricultural property. Both defendants are in possession as well having their ownerships in respect of their shares. If they will be restrained from creating any charge over their properties, they being agriculturist will not able to obtain agricultural loan/crop loan for cultivation and preservation of the suit property during pendency of suit.

30] Being agriculturist their livelihood depends on cultivation of these lands by obtaining frequent/yearly crop and agricultural loans by creating charge over suit property. Hence, in my opinion, it

will not be justifiable for restraining them, for use of their own land for earning their bread and butter, till disposal of suit.

31] In above situation, in my opinion plaintiff will be entitled for injunction against defendants only for restraining them from creating alienation of suit property but not for restraining defendants from creating any charge over it.

32] Hence, for reasons recorded above, I answer point Nos. 2 and 3 accordingly and in order to answer point No.4, I proceed to pass following order;

### **ORDER**

1. Application Exh.5 is partly allowed.
2. Defendant Nos. 1 and 2, shall not alienate the portion of suit property, owned by them to any third parties by any mode or manner, till disposal of suit, without following due process of law.
3. However defendant No.1 as well 2 are at liberty to obtain loan over their respective properties (creating charge) for cultivation and development of their shares for agricultural purpose, which shall be liable against them subject to decision of suit.
4. Parties to bear their own costs.

(Exh.5)

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5. Both parties to assist court for speedy disposal of suit.
6. No order as to costs.

Date : 20/12/2022.

**(B.A. Gaikwad )**  
Civil Judge Senior Division,  
Jaysingpur.