

MHKO070021462025

Special Civil Suit No.91/2025.

Shubhangi R. Shinde
Vs.
Sulochana S. Gadkari and others.

Order below Exh.5 in Special Civil Suit No.91/2025.

The plaintiff has instituted a suit for specific performance of the contract and for permanent injunction, wherein she 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.

Facts of the plaintiff's case are as under –**2. Description of the suit property-**

A) The agricultural land bearing Gat No.1037, ad-measuring 2 Hectare 86 Are, out of which 1 Hectare 43 Are land situated at village Danoli, Tal. Shirol, Dist. Kolhapur, which is bounded as follows:-

Towards East :- Road and property of Mr. Sawant.

Towards West :- Remaining property of defendants out of Gat No.1037.

Towards South:- Property of Mr. Kulkarni.

Towards North:- Road and property of Mr. Appasaheb Khardekar.

The above-described property was agreed to be sold by defendant Nos.1 to 4 to the plaintiff for a total consideration of ₹39,00,000/- on 30.08.2023. Thereafter, the names of Rajendra Mahaling Pise and Satish Bajirao Shinde were deleted from the 7/12 extract of Gat No.1037, and their additional shares were accordingly mutated in the names of the defendants. Defendant No. 4 subsequently sold his 1/3rd share out of Gat No.1037, i.e., land admeasuring 95.33 Ares. Thus, the

property of defendant Nos.1 to 3, admeasuring 95.34 Ares out of the 1 Hectare 43 Ares agreed to be sold them to the plaintiff is the disputed property in the present suit. (Hereinafter referred to as the 'suit property').

3. According to the plaintiff, the defendants had agreed to sell the suit property to her for a total consideration of ₹39,00,000/-. Out of the said consideration, the plaintiff paid an amount of ₹20,00,000/- to the defendants as part payment. On 30.08.2023, the defendants were present at the office of the Sub-Registrar, Shirol, for the purpose of executing a registered agreement to sell in favour of the plaintiff. However, due to certain technical difficulties, the said agreement to sell could not be registered. Consequently, the defendants executed an agreement to sell before the Advocate Notary, Shri Rajesh Baburao Kagwade, Jaysingpur, in the presence of witnesses, namely Papalal Abdul Jamadar and Saurabh Khandu Bhise. The plaintiff contends that she has always been ready and willing to perform her part of the contract. Therefore, on 02.07.2024, the plaintiff issued a legal notice to defendant Nos.1 to 3, calling upon them to execute the sale deed in respect of the remaining land admeasuring 95.34 Ares. Despite receipt of the said notice, defendant Nos.1 to 3 failed to execute the sale deed. On the contrary, they allegedly attempted to alienate the suit property in favour of third parties. Consequently, the plaintiff published a public notice in a newspaper dated 29.08.2025. In the aforesaid circumstances, the plaintiff has filed the present suit seeking specific performance of the contract and a decree of permanent injunction restraining the defendants from alienating the suit property. In the alternative, the plaintiff has sought recovery of ₹15,00,000/- with interest at the rate of 18% per annum from defendant Nos.1 to 3.

4. Defendant Nos.1 to 3 have filed their say and written statement (Exh.25), denying all adverse allegations made by the plaintiff. According to them, the predecessor-in-title of the defendants, namely deceased Shankar Dhondi Gadkari, was a protected tenant of Gat No.1037 admeasuring 2 Hectares 86 Are, and a certificate under Section 32-M was issued in his name. After his demise, the name of Vilas, who was his son, came to be entered in the 7/12 extract of Gat No.1037. It is further contended by the defendants that Vilas had contracted two marriages. Suman was his first wife and Alka was his second wife. Suman was residing at her parental home. Thus, Gat No.1037 was in possession of Alka and her children, namely Sujata, Sujit, and Vaishali, who claim to have an undivided share therein. According to the defendants, partition of Gat No.1037 has not yet taken place among the legal heirs of deceased Shankar Dhondi Gadkari. Defendant Nos.1 to 4 were neither owners nor possessors of Gat No.1037. Hence, according to them, the plaintiff is not entitled to seek execution of the agreement to sell from the defendants. The defendants have specifically denied that the plaintiff paid them an amount of ₹20,00,000/- towards consideration. They have also denied execution of the alleged agreement to sell in favour of the plaintiff and have contended that the agreement to sell dated 30.08.2023 is forged and bogus. On these grounds, they have prayed for dismissal of the suit.

5. Defendant No.4 has filed his written statement (Exh.29) and admitted the claim of the plaintiff.

6. Heard Shri. N. V. Jangam, learned advocate for the plaintiff and Shri. S. S. Chavan, learned advocate for defendants No.1 to 3 and learned advocate Shri. O. A. Kumbhar for defendant No.4.

7. 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 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: -

8. Learned Advocate for the plaintiff has submitted that the defendants had agreed to sell the suit property to the plaintiff and, in furtherance thereof, executed a notarized agreement to sell in her favour. However, they have failed to perform their part of the contract. Therefore, the plaintiff has filed the present suit to seek specific performance of the said contract. It is further submitted that the defendants are attempting to alienate the suit property to third parties. Hence, it is necessary to grant a temporary injunction restraining them from alienating the suit property until the final disposal of the suit. On the other hand, the learned Advocate for defendant Nos.1 to 3 has submitted that defendant Nos.1 to 3 never agreed to sell the suit property to the plaintiff and never executed the alleged agreement in her favour. According to them, the plaintiff has not paid any advance amount. The alleged agreement to sell is bogus and fabricated. Therefore, no decree for specific performance can be granted on the

basis of the said alleged agreement. On these grounds, they have prayed for rejection of the application.

9. On perusal of the record, it appears that the plaintiff has produced on record the agreement to sell dated 30.08.2023. On perusal of the said document, it prima facie appears that defendant Nos.1 to 4 executed the said agreement in favour of the plaintiff. It is specifically recited therein that, out of Gat No. 1037, the defendants agreed to sell land admeasuring 1 Hectare 46 Are to the plaintiff. It further appears that the said agreement was executed before a Notary Advocate. The photographs of the plaintiff as well as defendant Nos.1 to 4 are affixed on the agreement, along with copies of their respective Aadhaar Cards. Though the defendants have contended that the said agreement to sell is fabricated and bogus, they have not placed on record any documentary or oral material, at this stage, to substantiate the said contention. It does not appear that the defendants lodged any report with the concerned Police Station alleging that it is a fabricated document. Even they had not given reply to the notice dated 02.06.2024 issued by the plaintiff alleging the said facts. Therefore, at this prima facie stage, it can be inferred that the defendants executed the agreement to sell in respect of the suit property in favour of the plaintiff.

10. On perusal of the agreement to sell, it does not appear that time was intended to be the essence of the contract. On the contrary, it is recited therein that the defendants had agreed to obtain necessary permission from the Tahsildar, Shirol, for effecting sale of the suit property in favour of the plaintiff. It is not the case of the defendants that they have performed their part of the contract. On the contrary, the record indicates that the plaintiff issued a legal notice dated

02.06.2024 to the defendants, calling upon them to execute the sale deed in respect of the suit property. The said notice appears to have been served upon defendant Nos.2 and 4, whereas defendant No.3 refused to accept the same. In the said notice, the plaintiff has specifically stated that she has always been ready and willing to perform her part of the contract. Therefore, at this prima facie stage, it appears that the plaintiff has demonstrated her readiness and willingness to perform her part of the contract.

11. Defendant Nos.1 to 3 have contended that they do not have title over the suit property. However, in the agreement to sell, they have specifically represented themselves to be the owners of the suit property. Moreover, the names of the defendants are reflected in the 7/12 extract of Gat No. 1037 as owners thereof. Moreover, the plaintiff has obtained the order of temporary injunction in RCS No. 233 of 2018 alleging their title over the suit property. In view of the aforesaid material on record, it cannot, at this stage, be accepted that the defendants are not the owners of the suit property or that they were not competent to execute the agreement to sell in favour of the plaintiff.

12. In view of the foregoing discussion, it prima facie appears that the defendants executed the agreement to sell in respect of the suit property in favour of the plaintiff. The material placed on record also indicates that the plaintiff has been ready and willing to perform her part of the contract. Accordingly, it can be said that a prima facie case is in favour of the plaintiff and that the balance of convenience also lies in her favour. The plaintiff has apprehension that the defendants may alienate the suit property. It is seen from the record that the plaintiff has published a public notice in a newspaper informing about the

alleged agreement to sell and cautioning the public against purchasing the suit property. This circumstance supports her apprehension. Thus, if the defendants are not restrained and the suit property is alienated during the pendency of the suit, it would create third-party interests and result in multiplicity of proceedings. It will cause irreparable loss to the plaintiff. In such circumstances, it is just and proper to restrain the defendants from alienating the suit property until the final disposal of the suit. Consequently, the application deserves to be allowed. Hence, I answer Point Nos.1 to 3 in the affirmative and, in respect of Point No.4, proceed to pass the following order.

ORDER

1. The application (Exh.5) is allowed.
2. The defendants are hereby restrained from alienating the suit property or creating any third-party interest over the suit property, until the final adjudication of the suit.
3. Cost in cause.

Jaysingpur.
Date: 13.02.2026.

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