

MHKO070024272023



ORDER BELOW EXH.5 IN SPECIAL CIVIL SUIT NO.76/2023.

Sou.Vandana Subhash Potdar etc.

V/s.

Sou.Parvati Ramesh Hatalge etc.

Plaintiffs have moved the present application by taking recourse to Order 39 Rule 1 of the Code of Civil Procedure, 1908 for temporary injunction restraining defendant No.1 from alienating the suit properties and also from raising any construction over the suit properties till disposal of the suit.

2. Case of the plaintiffs in short is as under :-

C.S.No.1326/C measuring 51.15 square meter and C.S.No.1328 measuring 66.90 square meter of which total area is 118.05 square meter having property card No.21000481 situated within the territorial limits of Nagar Parishad, Jaysingpur, Tal.Shirol, Dist.Kolhapur, surrounded by following boundaries :-

- Towards East : Property of C.S.No.1329 and 1330.
- Towards West : Property of C.S.No.1326 (B).
- Towards South : Property of C.S.No.1326 (A)
- Towards North : Road.

are hereinafter referred to as 'suit properties' for the sake of brevity.

3. According to plaintiffs, they had good relation with defendant No.2 and after discussion with him, defendant No.2 agreed to purchase the suit properties for the consideration of Rs.60,00,000/- and also admitted to give Rs.15,00,000/- to plaintiff No.1 towards her share in the properties and that time earnest amount of Rs.1,00,000/- was given to plaintiff No.1 by way of cheque bearing No.124186 of Canara Bank, Branch – Jaysingpur on 08/09/2022 and notarized agreement to sale has been executed on 08/09/2022. It was also agreed that plaintiff No.2 and 3 will take Rs.30,00,000/- towards their share and also issued cheque of Rs.1,00,000/- in favour of plaintiff No.2 bearing No.124182 towards earnest amount. Further amount of Rs.1,00,000/- was given by way of cheque bearing No.124184 to plaintiff No.3 towards earnest amount. That time one notarized agreement was executed on 21/08/2022. Further it was agreed that, plaintiff No.4 will be given Rs.15,00,000/- and also amount of Rs.1,00,000/- was given by cheque and cash.

4. As per plaintiffs, on 02/02/2023 defendant No.2 told plaintiff No.4 that he will not execute sale-deed on his own name but, sale-deed to the extent of 200 Square Feet area will have to be executed on the name of defendant No.1 for consideration of Rs.11,00,000/- and sale-deed of remaining area will have to be executed on the name of Sanjay Balasaheb Nargude for the amount of Rs.45,95,000/-.

According to plaintiffs, on 20/06/2023 defendant No.2 has told plaintiffs that sale-deed of 200 square feet area has to be executed and rough draft of sale-deed was shown to them in which consideration amount of Rs.11,00,000/- was mentioned and accordingly cheque bearing Nos.213061, 213062, 213063

and 213064 of Bank of Maharashtra, Branch – Jaysingpur were issued in favour of plaintiffs. According to plaintiffs, they do not know defendant No.1 and first time seen her at the Registrar Office, Shirol. That time defendant No.2 told plaintiffs that Sanjay Balasaheb Nargude has not managed consideration amount and so his sale-deed will be executed later on. But, one sale-deed of the part of suit property has to be executed but, concealing all facts, defendants have got executed sale-deed bearing No.3828/2023 of total area of 118.05 square meter and after obtaining certified copy, alleged fraud has been revealed. Thereafter, plaintiffs have informed that they are going to lodge police complaint and therefore defendant No.2 has issued notice to them on 20/09/2023 through advocate Shri.Gurunath Mane. According to plaintiffs, sale-deed bearing No.3828/2023 has been got executed by defendant No.1 on 20/06/2023 by playing fraud and so defendant No.1 has no right in the suit properties and so cause of action arose in favour of plaintiffs to file the present suit for the declaration of sale-deed as void alongwith this application for temporary injunction for restraining them from alienating the suit properties and also from raising any construction on it.

5. Defendant No.1 has filed her written statement below Exh.18 and denied the contentions putforth by plaintiffs in their plaint. According to defendant No.1, after due discussion, plaintiffs have agreed to sale the suit properties to her and that time no one was residing in the suit properties on rent etc. On the day of sale-deed, defendant No.1 has brought Sanjay Tukaram Rajput and Sudhir Shripal Chougule as an identifying witnesses but, plaintiffs have brought Shri.Shashikant Ashok Pandav as witness on sale-deed.

6. According to defendant No.1, she has purchased the suit properties for the total consideration amount of Rs.11,00,000/-, which is in consonance with ready reckoner and said consideration amount was given by way of account payee cheques in following manner.

Sr. No.	Name of Bank	Date	Account payee cheque No.	Amount	Party
1	Bank of Maharashtra, Branch – Jaysingpur.	27/06/23	213061	2,75,000/-	Vandana Subhash Potdar.
2	Bank of Maharashtra, Branch – Jaysingpur.	27/06/23	213062	2,75,000/-	Geeta Subhash Potdar.
3	Bank of Maharashtra, Branch – Jaysingpur.	27/06/23	213063	2,75,000/-	Gayatri Mahesh Potdar.
4	Bank of Maharashtra, Branch – Jaysingpur.	27/06/23	213064	2,75,000/-	Prasad Manohar Sajanikar.

Defendant No.1 further pleaded that, it is falsely mentioned by the plaintiffs that suit properties were agreed to be sold for Rs.60,00,000/- as alleged and from the date of sale-deed she is in possession of the suit properties. Plaintiffs have filed false suit and application, which according to defendant No.1 needs to be dismissed with compensatory cost.

7. From rival pleadings of parties, following points arise for my consideration, on which I have recorded my findings thereon with

reasons to follow.

Sr.No.	POINTS	FINDINGS
1.	Whether plaintiffs have established prima facie case in their favour ?	... In the negative.
2.	Whether balance of convenience lies in favour of them ?	... In the negative.
3.	Whether irreparable loss will be cause to plaintiffs if injunction as sought is not granted in their favour ?	... In the negative.
4.	What order ?	... As per final order.

REASONS

8. In support of their contention, plaintiffs have filed vide list Exh.3, copies of notarized agreements and certified copy of registered sale-deed bearing No.3828/2023 and also copies of revenue records and property cards. Plaintiffs have also filed on record copy of judgment in Regular Civil Suit bearing No.113 of 2003 and copy of judgment in Regular Civil Appeal bearing No.09 of 2007.

9. Heard learned counsel Shri.S.T. Chougule for plaintiffs and learned counsel Shri.C.S. Killedar for defendant No.1.

10. Learned counsel for plaintiffs has also relied upon the case law in Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass reported in 2005 (4) Bom. C.R. 408. In this case Hon'ble Apex Court has held in para No.10 that “ *be that as it may, Mr.Sachhar is right in contending that unless and until a case of*

irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower Appellate Court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellants claim being found baseless ultimately, it is always open to the respondent to claim damages, or, in an appropriate case, the Court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower Appellate Court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial Court is restored.”

AS TO POINT NO.1 :-

11. It is the case of plaintiffs that, they have agreed to sale the suit properties to other person and notarized agreement has also been executed. But, later on defendant No.2 asked them to

execute the sale-deed of the part of suit property in favour of defendant No.1 and on that pretext by playing fraud got executed sale-deed of the whole of suit properties in favour of defendant No.1. As per plaintiffs, the sale-deed in dispute is illegal and void and so they have sought declaration to that effect alongwith this application for temporary injunction restraining alienation and also from raising construction on it.

On the other hand, as per defendant No.1 after due discussion, all plaintiffs have agreed to sale the suit properties to them for the total amount of Rs.11,00,000/-, which is also correct valuation as per the ready reckoner and accordingly consideration amount by way of cheque bearing Nos.213061, 213062, 213063 and 213064 of Rs.2,75,000/- each was given in favour of plaintiffs.

As per defendant No.1, she has purchased the suit properties for valuable consideration and after payment of consideration, sale-deed has been executed by plaintiffs on 27/06/2023, which is registered vide No.3828/2023. According to her, plaintiffs have put forth false contention against her and so she has requested for dismissal of application with costs.

12. It is settled principle of law that, in issuing a temporary injunction, the tests to be applied are,

- i) Whether the plaintiff has a prima facie case.
- ii) Whether the balance of convenience is in favour of the plaintiff : and
- iii) Whether the plaintiff would suffer an irreparable injury if his prayer for temporary injunction is disallowed.

13. Prima facie case implies a probability of the plaintiff for obtaining a relief on the material placed before the Court. Further, plaintiffs have also to prove that legal injury caused to them is far greater than those that may be caused to defendants. Here, plaintiffs have alleged the playing of fraud and *mala fides* by defendant No.1 by levelling the allegations that disputed sale-deed have been got executed on the pretext of purchasing part of the suit properties only. Admittedly, execution of the registered sale-deed in question is not in dispute but, what plaintiffs have alleged that, it is got executed by way of fraud etc. So, burden of proving *mala fide* & fraud is upon plaintiffs. When they have admitted the execution and registration of the sale-deed, presumption lies in favour registered sale-deed that it is executed for lawful consideration and ownership is transferred. So, heavy burden is upon plaintiffs to establish the factum of fraud without any ambiguity. Mere assertion or bald statement is not enough to discharge the burden when the law imposes upon the person levelling *mala fides* and fraud and it must be supported by way of requisite materials. Here, except the contention of the plaintiffs, there is nothing on record to establish the alleged *mala fide* and fraud even prima facie. So, it cannot be said that plaintiffs have established the prima facie case in their favour. Consequently, I answer point No.1 in the negative.

AS TO POINT NO.2 TO 4 :-

14. When plaintiffs have failed to establish prima facie case in their favour, then it cannot be said that balance of convenience lies in their favour. Consequently, no question of causing irreparable loss would arise. Hence, I answer point No.2

and 3 in the negative and in response to point No.4 pass the following order.

ORDER

- 1) Application at Exh.5 is hereby rejected.
- 2) Costs in cause.

Jaysingpur.

Date : 18/08/2025.

(Y. H. S. Deshmukh)

Civil Judge Senior Division,
Jaysingpur, Dist.Kolhapur.