

ORDER BELOW EXH.NO.5

By this application, plaintiff has prayed for temporary injunction against defendant as not to transfer the suit property or not to create any charge over it.

2] As per the application, the agricultural property to the extent of 2 anna 8 pai share i.e. 0 H=16 R, out of 0H=95 R in Gat no.219, situated at village Kololi, Tal. Panhala, Dist. Kolhapur, with the four boundaries mentioned in the application, is the property in dispute. (The said property is hereinafter referred as 'suit property' for the sake of convenience.) Suit property is owned and possessed by defendant and he was and is having right to dispose of the same. Defendant no.1 was in need of sale of suit property for his necessity and plaintiff is agriculturist, so as per the mutual understanding between plaintiff and defendant dt.10/7/2017, defendant agreed to sale suit property to plaintiff for the consideration of Rs.3,20,000/- and executed agreement to sale (Sanchakar patra), in favour of plaintiff by accepting Rs.3,05,000/-. It was agreed in between plaintiff and defendant that the remaining amount of Rs.15,000/- will be paid at the time of sale deed. Accordingly, agreement to sale came to be executed before Notary Public. It was agreed that defendant will hand over possession of the suit property at the time of sale deed and defendant has to make compliance of all necessary documents for execution of the sale deed. Defendant has accepted the amount of Rs.3,05,000/- from plaintiff at the time of agreement to sale.

CNR No. MHKO17-000076-2018

3] It is the case of the plaintiff that plaintiff was and is ready and willing to pay the remaining amount and get execute sale deed in his favour from defendant and so when he asked defendant for execution of the sale deed in his favour, defendant avoided the same and thereafter denied the same. So on 23/11/2017, plaintiff issued notice to defendant by R.P.A.D. calling him to execute the sale in favour of plaintiff, however, defendant denied the same and issued false reply notice to plaintiff. Defendant denied to execute sale deed of suit property in favour of plaintiff with an intention to sale the suit property to third person and so plaintiff has filed this suit for perpetual injunction for restraining defendant from selling suit property to third person or creating interest of any third person over the suit property and not to mortgage the suit property or create charge over it. It is the contention of the plaintiff that it will take time for the decision of this suit and already defendant has accepted Rs.3,05,000/- from plaintiff as a consideration for the sale deed of suit property, however, not executed sale deed in favour of plaintiff and now defendant is trying to alienate the suit property to third person, which is necessary to prevent, so plaintiff is having prima facie case and balance of convenience in his favour and plaintiff will suffer an irreparable loss, if temporary injunction as prayed by plaintiff, is not granted in his favour and against defendant. So Plaintiff has prayed for temporary injunction against defendant as not to transfer or alienate the suit property or not to ceate any charge over the suit property.

4] Defendant has appeared and filed his say to this application vide Exh.23 and denied all the contents in this

CNR No. MHKO17-000076-2018

application. As per the say of the defendant, application is false and description of the suit property is false. Defendant was never in need of selling suit property and he has never made any transaction with plaintiff. Defendant has denied that he has agreed to sell the suit property to plaintiff for the consideration of Rs.3,20,000/- on 10/07/2017 and accepted Rs.3,05,000/- and executed agreement to sale in favour of plaintiff for the consideration of Rs.3,20,000/- about suit property by accepting Rs.3,05,000/-. Defendant has denied all the contents in the agreement to sale (Sanchakar patra) and claim of plaintiff in this application and contended that plaintiff has sent false notice to him on 23/11/2017 for execution of sale deed of suit property, however, he has sent reply notice to plaintiff and communicated plaintiff as not to take any action on the basis of forged documents. Defendant is not liable to return Rs.3,05,000/- to plaintiff and no cause of action for filing of this suit, has occurred. Plaintiff has not paid any amount to defendant and this suit is not within limitation. So defendant has prayed for rejection of the application.

5] In the alternative, it is say of the defendant that plaintiff and defendant are relatives of each other and plaintiff has obtained signatures and thumb impression of defendant on one identity card for obtaining handloan from third person for the needs of plaintiff and thereafter plaintiff in collusion with the said third person, has filed this false suit by taking disadvantage of illiteracy of defendant. Plaintiff has prepared forged agreement to sale and defendant is going to file criminal case against the plaintiff. So on the above grounds, defendant has prayed for rejection of the application.

CNR No. MHKO17-000076-2018

6] Heard both the sides and perused the record. After going through the application and documents on record, following points arise for determination and I am giving my findings thereon for the reasons stated thereto-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1]	Whether plaintiff is having prima facie case ?	In the affirmative.
2]	Whether balance of convenience lies in favour of plaintiff ?	In the affirmative.
3]	Whether plaintiff will suffer an irreparable loss, if temporary injunction, as prayed, is not granted in his favour?	In the affirmative.
4]	What order?	As per final order

REASONS

7] In support of the application, plaintiff has filed on record, his affidavit vide Exh. 27. Plaintiff has filed on record the original agreement to sale, copy of notice sent by plaintiff to defendant, reply notice sent by defendant to plaintiff, 7/12 extract of suit property Gat no.219 vide list below Exh.3. Defendant has not filed on record any document.

AS TO POINT NOS.1 TO 3:-

8] Learned advocate for plaintiff submitted that defendant agreed to sale suit property to plaintiff for the consideration of Rs.3,20,000/- and accepted Rs.3,05,000/- and executed agreement to sale in favour of plaintiff before Notary Public on 10/07/2017 and plaintiff has filed on record the said original agreement to sale,

CNR No. MHKO17-000076-2018

which bears signature of defendant. He submitted that period of limitation for execution of sale deed was within 7 months and defendant has avoided the execution of sale deed, even though plaintiff repeatedly asked for it. He submitted that plaintiff was and is ready and willing to get execute sale deed of the suit property by paying remaining amount of Rs.15,000/- to defendant, however, defendant has avoided the same and he is trying to transfer the suit property to third person and to create charge over it and if the same is done, then plaintiff will suffer an irreparable loss. So he prayed for temporary injunction.

9] Per contra, ld. Advocate for the defendant submitted that the alleged agreement to sale, is not registered one and unregistered document is not creating any right in favour of plaintiff. He submitted that plaintiff has not adduced any evidence showing that consideration amount was paid to defendant and there are in all six persons in Gat No.219 having 2 anna 8 pai share jointly and defendant alone was not owner of the 16 R area. He submitted that plaintiff has not complied ingredients for granting injunction in his favour and so he has prayed for rejection of the application.

10] Heard both the sides and perused the record. Perusal of record shows that in support of his claim in his application, plaintiff has filed on record the original agreement to sale dt. 10/7/2017 executed in between plaintiff and defendant. I have perused the said agreement to sale. It is executed by defendant Bhagwan in favour of plaintiff before Notary in respect of 16 R land in Gat no.219, with the boundaries as mentioned in this application. The said agreement to sale shows that the contents are mentioned in it, that Rs.3,05,000/-

CNR No. MHKO17-000076-2018

have been paid by plaintiff to defendant and remaining amount of Rs.15,000/- was agreed to pay at the time of sale deed. So prima facie the said contents in the said agreement to sale, supports the contention of plaintiff regarding the transaction between plaintiff and defendant.

11] Further even though defendant has denied the transaction in between plaintiff and himself and the said agreement to sale and contended that plaintiff had obtained his signatures on one identity card for getting loan for plaintiff, from third person and thereby plaintiff misused the same and prepared forged document of agreement to sale, however, except the said mere words, defendant has not adduced any evidence in support of his said defence. Further, the document of agreement of sale, is not identity card and the written statement of defendant vide Exh.23 shows that defendant is making signature and he is not illiterate person. The said agreement to sale is notarized document and prima facie, defendant has not rebutted the said evidence of plaintiff regarding execution of said agreement to sale.

12] Further, even though ld. Advocate for defendant has submitted that the agreement to sale is unregistered and it is not creating any right in favour of plaintiff, however, perusal of the pleadings of both the sides, it is not disputed that yet the possession of suit property is with the defendant and at the time of agreement to sale, possession of suit property was not handed over to the plaintiff. So in such circumstances, in the light of above evidence on record, I do not find any substance in the said submissions.

13] Plaintiff has filed on record 7/12 extract of land Gat No.219 vide list below Exh.3, which shows name of defendant Bhagwan Tukaram Shetye. It is submitted on behalf of defendant that there are in all six persons jointly having 16 R land in Gat no.219 and defendnat alone was not possessing 16 R land and so he was not having right to execute the agreement to sale. The said 7/12 extract bears names of defendant Bhagwan, Girjabai Bhikaji Satpute, Shalabai Prakash Salunkhe, Dhondubai Yashwant More, Bharati Sadashiv Jadhav and Sakhubai Prakash Power, jointly to the extent of 0 H=15.83 R. The said extract shows name of defendant and the above persons entered as per Mutation Entry no.2513 and name of defendant as head of the family. Till today, none of the above mentioned persons except defendant, have made any complaint regarding the said agreement to sale in favour of plaintiff. So in such circumstances, at this prima facie stage, I do not find any substance that merely because names of above all persons are recorded to the 7/12 extract of the suit property, defendant cannot execute agreement to sale for or on their behalf in favour of plaintiff.

14] So in such circumstances and in the light of absence of any rebuttal evidence on the part of defendant, it is needless to say that prima facie case and balance of convenience lies in favour of plaintiff and not in favour of defendant. Plaintiff has paid an amount of Rs. 3,05,000/- to defendant and so if during pendency of this suit, any charge over the said suit property, is created or any alienation took place in respect of the suit property by defendant, then certainly it will lead to multiplicity of proceeding and it will cause irreparable loss to plaintiff. Further, avoiding multiplicity of proceeding and

CNR No. MHKO17-000076-2018

preventing change in the nature of suit property, temporary injunction can be granted. So in such circumstances, if temporary injunction as prayed by plaintiff, is not granted against defendant, as not to alienate or transfer suit property or not to create any charge over the suit property, then plaintiff will suffer an irreparable loss, however, defendant will not suffer any irreparable loss. So in such circumstances, in the light of above entire discussion, I answer point nos.1 to 3 in the affirmative.

AS TO POINT NO.4:-

15] As I have already answered point nos.1 to 3 in the affirmative, so in order to answer point no.4, I proceed to pass the following order-

ORDER

- 1] Application is allowed.
- 2] Defendant or anybody claiming on his behalf, is hereby temporarily restrained from transferring or alienating suit property or from creating any charge over the suit property till the final decision of this suit.
- 3] Cost in main cause.

Dated : 23/10/2018.

Sd/-
[V.A.Awaghade]
Jt. Civil Judge, J. D., Panhala.

:- CERTIFICATE :-

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original Order.

Name of the Stenographer	Shri. A.A.Patil
Name of Court	Shri. V.A.Awaghade
Date of Dictation	23/10/2018.
Order signed by the P.O. on	26/10/2018.
Order uploaded on	26/10/2018.