

**ORDER PASSED BELOW EXH. 5 IN R.C.S. No. 120/2016.**

Rajendra Bhupal Madyapghol ----- Plaintiff.

V/s.

Balkabai Kalappa Badame, etc. 9 ----- Defendants

1. The suit is for specific performance. The application is filed by plaintiff for restraining defendants from alienating the suit property to third person.

2. It is contention of the plaintiff that the suit property is part of original gat No. 1220 which was defendants joint family property. The husband of defendant No. 1 Kalappa Badame was died in 1986. After his death defendants sale out 3.1/2 acre of said gat number to Tukaram Appa Aparadh and 3 acre land was allotted to Ramchandra Sonaba Lagad as project affected person by Government. In the remaining land the partition was carried out between defendants in joint family and defendant No. 1 has 52 r. land in her possession and remaining in her son Pandurang Badame.

3. According to the plaintiff, defendant No. 1 agreed to sale suit property to the plaintiff for consideration of Rs. 1,40,000/- (Rs. One lakh Forty thousand only) and executed unregistered agreement of sale in favour of plaintiff on 13/04/2002 and received earnest amount of Rs. 1,05,000/- (Rs. One lakh five thousand only) and possession was handed over to the plaintiff on same day and he is in possession of suit property till today. The remaining amount of consideration was agreed to be paid on the date of execution of sale deed. Allegedly, it was further agreed that, as the permission is required under rules of Bombay Tenancy Act for agreement, defendant will obtain the necessary permission and inform

plaintiff accordingly. And after informing about same plaintiff has to complete agreement within one year. It is further contended by plaintiff that all defendant Nos. 2 to 8 were present at the time of unregistered agreement and they all signed on the same agreement.

4. However, according to the plaintiff, in spite of approaching several times, defendants avoided execution of sale deed and now defendants are denied to execute the sale deed. It is further contended that till today defendants have not informed about permission obtained regarding agreement. According to the plaintiff, defendants are showing suit property to prospective buyers with view to alienate it and also trying to make mortgage on suit property. Hence, the plaintiff filed this application for seeking temporary injunction against defendant No. 1 restraining her from alienating suit property till suit is finally adjudged.

5. Defendant No. 1 by filing say (Exh.15) strongly opposed to the application. Defendant by filing say denied all assertions of the plaintiff in respect of execution of agreement of sale in favour of plaintiff. The defendant No. 1 contended that the alleged unregistered agreement was made on hundred rupee stamp and not registered, it would not be read in evidence and hence, the application of plaintiff is not tenable.

6. Defendant No. 1 denied possession of the plaintiff, over the suit property. She contended that as the suit property is received to them as per Tenancy Act, and it could not be alienated or sale to other persons. Hence the alleged agreement dtd. 13/04/2002 is illegal and can not be executed. Hence, they contended to reject the application with costs.

7. Heard Ld. advocate for both the parties.

8. Considering contentions and submissions by both the parties

following points arose for determination and findings thereon are recorded with reasons.

<u>POINTS</u>	<u>FINDINGS</u>
1. Does the plaintiff prove that he has prima-facie case in his favour ?	- . ...YES
2. Does the Plaintiff prove that balance of convenience lies in his favour ?	-. ... YES
3. Does the plaintiff prove that he will sustain irreparable loss, if injunction is not granted?	- . ... YES
4. What order?	- . As per final order. Appln. is allowed.

### REASONS

#### AS TO POINT NO.1 to 3

9. According to the plaintiff, defendant No. 1 agreed to sale suit property to the plaintiff for consideration of Rs. 1,40,000/- (Rs. One lakh Forty thousand only) and executed unregistered agreement of sale in favour of plaintiff on 13/04/2002 and received earnest amount of Rs. 1,05,000/- (Rs. One lakh five thousand only) and possession was handed over to him on same day and he has possession over the suit property till today. In support of this contention, he has produced the alleged agreement to sale vide Exh. 3/1. From this agreement it prima facie appears that defendant No. 1 has agreed to sell the suit property to the plaintiff. There is recital about handed over possession of the suit property to the plaintiff by defendants. Though, according to defendant No. 1 the said agreement can not be read in evidence as insufficiently

stamped, it can be read for co-lateral purpose. The Plaintiff has filed affidavit of Shri. Ashok Gopal Joshi Vide Exh. 21 who is scribe. He stated that he has written the alleged agreement. Further, plaintiff has filed affidavit of Shri. Bajirao Anandrao Gaikwad, vide Exh. 19. Who's property is adjacent to the suit property. He has stated that, Plaintiff has possession over the suit property. On the contrary defendants have filed affidavit of defendant No. 1 and 2 vide Exh. 26 and 27 respectively. They have reiterated their contentions in W.S. They also filed affidavit of Shri. Sandip Devappa Latte vide Exh. 28. He is working in poultry form adjacent to the suit property. He stated that there is no agreement has been taken place between plaintiff and defendants. He further stated that the defendant No. 1 has the possession over the suit property.

10. The plaintiff's witnesses i.e. scribe Shri. Joshi and Gaikwad are independent witnesses, hence are relied. On the contrary, defendant No. 1 and 2 are interested witnesses. Hence, they could not be relied. Therefore, from documentary as well as oral evidence by plaintiff it prima facie held that defendant No. 1 agreed the suit property to the plaintiff.

11. It is contention of the plaintiff that the defendant No. 1 is trying to alienate the suit property. Hence, claimed temporary injunction. The plaintiff stated on affidavit that defendant No. 1 is trying to alienate the suit property. Also perusal paper notice vide Exh. 24/3 which is filed by defendant No. 1, it appears that defendant No. 1 has rejected the claim of the plaintiff. As per order 39 rule 1 of C.P.C., it is sufficient that, Property in dispute in the suit is in danger of being alienated. Hence, it is held that the plaintiff has prima facie case in his favour. The suit is for specific performance on that alleged agreement. If the suit property is alienated an irreparable loss will cause to the plaintiff. Of course, balance of convenience lies in favour of the plaintiff.

Therefore, point No. 1 to 3 are answered as 'Yes'. As the prima facie case and balance of convenience lies in favour of the plaintiff and irreparable loss will cause to him if injunction is not granted, the application deserves to be allowed. Hence, in result, point no. 4 is answered accordingly and following order is passed -

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- A] The application is allowed.
  
- B) Defendant No. 1 is hereby restrained from alienation any way of the suit property till disposal of the suit.

sd/-

Date – 19/01/2017.  
Kurundwad.

( A. M. Patil )  
Judicial Magistrate, F.C.,Kurundwad,  
Tal. Shirol, Dist. Kolhapur.

I affirm that the contents of this P.D.F. File Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. S.S. Mandarekar,stenographer (L.G.)
Name of Court	Jt.Civil Court, J.D.,& J.M.F.C., Kurundwad, Tal. Shirol,Dist. Kolhapur.
Date of Dictation	19/01/2017
Judgment signed by the P.O. on	19/01/2017
Judgment uploaded on	25/01/2017