

CNR No.MHLA No.05-000248-2019



ORDER BELOW EXH.NO.05

(Date : 05.05.2021)

The present application has been filed by the plaintiffs under Order-39 Rule-1 and 2 of the Code of Civil Procedure for restraining the defendant from alienating or creating third party interest over the suit property bearing No.14/02/02 admeasuring 20 R situated at village Marshivini, Tq. Ahmedpur till the decision of the suit.

2) I heard Adv. Shri. B. K. Murkute on behalf of the plaintiffs and Adv. Shri. D. L. Ghogare on behalf of the defendant.

3) In view of the material on the record, the following points arise for my determination and I have recorded my findings against each one of them for the reasons as stated herein below :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Do the plaintiffs prove that, they have prima facie case in their favour ?	...In the negative.
2. Do the plaintiffs prove that, the balance of convenience lies in their favour ?	...In the negative.
3. Do the plaintiffs prove that, an irreparable loss would be caused to them, if, the temporary injunction sought is not granted in their favour ?	...In the negative.
4. What order ?	...Application is rejected.

REASONS

As to point Nos.1, 2 and 3.

4) In support of the application Adv. Shri. B. K. Murkute

has argued that, the defendant is the owner and possessor of the suit land bearing survey No.14/02/02 admeasuring 20 R. situated at village Marshivni, Tq. Ahmedpur, Dist. Latur. The said land is bounded by towards East : Land of Kotwad, Kale and Valse, towards West : Land of Tukaram Kisan Chavan, towards South : Land of Pundlik Sopan Gunale and towards North : 30 feet road and land of Pune. On 02.03.2015 the defendant had entered into the agreement to sale of the suit land with plaintiff No.1 for the consideration of Rs.16,11,051/- and after accepting the earnest amount of Rs.1,00,000/- the defendant had executed the agreement to sale in favour of plaintiff No.1. Thereafter, the defendant had accepted the amount of Rs.2,60,000/- from plaintiff No.1 and executed the receipt in presence of the witnesses on 10.04.2015. The defendant had accepted the amount of Rs.2,50,000/- from above the plaintiff and executed the receipt in presence of the witnesses. As per the mutual understanding in between plaintiff no.1 and the defendant, the defendant had entered into the agreement with plaintiff No.1 to 3 to sale the suit land. Accordingly, on 01.04.2016 the defendant had accepted the amount of Rs.4,00,000/- from the plaintiffs and executed the agreement to sale of the suit land in favour of them. In pursuance of the said agreement again the defendant had accepted the amount of Rs.2,00,000/- from the plaintiffs and executed the receipt to that effect in favour of them.

5) The defendant had received the total amount of Rs.12,10,000/- from the plaintiffs out of the agreed consideration amount of Rs.16,11,051/-. The defendant is avoiding to execute the registered sale-deed of the suit land in favour of the plaintiffs even after accepting the above huge amount from them. Therefore, on 26.04.2019 the plaintiffs have issued the notice through their

advocate and requested for accepting the balance consideration amount and execute the registered sale-deed. On 11.06.2019 the defendant has demanded the excess amount of Rs.4,00,000/- for execution of the sale-deed. The defendant has further threatened that, if the excess amount is not paid to him then he is going to sell the suit land to the third person.

6) The defendant has created fear in the mind of the plaintiffs that, he may alienate the suit land in favour of third person and it will cause irreparable loss to them which cannot be compensated in terms of money. If, the defendant has succeeds in alienating the suit land in favour of the third person then, that will also result in multiplicity of the suit. The plaintiffs have made out the prima-facie case for grant of injunction restraining the defendant from alienating the suit land in favour of the third person or creating third party interest over the suit land. The balance of convenience is also lies in favour of the plaintiffs. Therefore, it will be proper to restrain the defendant or any person claiming through him from alienating the suit land in favour of third person till the final decision of the suit.

7) On behalf of the defendant Adv. Shri. D. L. Ghogre has argued that, the defendant is the owner and the possessor of the suit land. The defendant was in need of money in the year January, 2015 to purchase the land and plot at village Parali and Daudpur and entered into an oral agreement with one person for the aforesaid transaction. He has further argued that, plaintiff no.1 has agreed to purchase the suit land as per the agreement to sale dated 02.03.2015 for the consideration of Rs.16,11,051/- and agreed to comply with the terms and conditions till 10.05.2015.

Plaintiff No.1 has failed to fulfill the terms and condition which are agreed in between them till 10.05.2015. On 01.04.2016 plaintiff No.1 has stated to the defendant that, he was unable to pay the remaining consideration amount of the above sale transaction and he want to add plaintiff No.2 and 3 as his partners along with him to the said agreement. Plaintiff No.1 has added plaintiff No.2 and 3 in the above agreement and they have paid the consideration amount Rs.4,00,000/- and agreed to pay the remaining consideration amount of Rs.06,01,051/- upto 30.06.2016. He has further argued that, plaintiff No.1 has not fulfilled the terms and condition within the stipulated period. Therefore, the defendant had failed to perform his part performance of contract regarding the purchase of land and plot at village Parali and Daudpur. Due to the non-compliance of the terms and condition of the above agreement to sale of the suit land by plaintiff No.1, the defendant had caused the monetary, physical and mentally loss. The agreement to sale which was executed on 01.04.2016 was illegal because the defendant had never agreed to sale the suit land in favour of plaintiff No.2 and 3. Plaintiff No.1 has intentionally not complied with the terms and condition of the agreement to sale only to harass the defendant. He has further argued that, plaintiff No.1 had not complied the terms and conditions of the agreement to sale, therefore he is not entitled to the claim the relief against the defendant.

8) As per the contention of the plaintiffs it reveals that, they have executed the agreement to sale dated 02.03.2015 and 01.04.2016, respectively with the defendant for the sale of the suit land. The plaintiffs are ready to perform their part performance of contract but the defendant is intentionally avoiding to execute the

sale deed in their favour. The defendant is trying to alienate the suit land and it will deprive the plaintiffs from their legal rights. The apprehension is created in the mind of the plaintiffs therefore, the defendant be restrained from alienating the suit land. The defendant has contended that, he has agreed to sale the suit land in favour of plaintiff No.1 but he has failed to pay the total consideration amount within the stipulated period and thereafter, he has added plaintiff No.2 and 3 as his partners to the said transaction. The plaintiffs are not entitled to claim the relief against the defendant because they have failed to perform their part performance of contract.

9) The plaintiffs have filed the letter dated 19.09.2016 issued by Special Land Acquisition Officer and Sub-Divisional Officer, Ahmedpur to the Sub-Registrar (Grade-I), Ahmedpur. From the contents of the said letter, it reveals that, Special Land Acquisition Officer has given the intimation to the Sub-Registrar (Grade-I), Ahmedpur that, for the purpose of the National Highway No.361 i.e. from Ganjur to Radga the acquisition proceeding was started and directed him not to register the sale deeds of Survey and Gat numbers which are mentioned in their enclosed list. The plaintiffs have also filed the letter dated 17.01.2019 which was given by the defendant to the Sub-Divisional Officer, Ahmedpur to grant permission to him to sale his land because the said land was not included in the said acquisition proceeding. The plaintiffs have not filed the documents on the record to show that, the Sub-Divisional Officer, Ahmedpur has issued the letter to the defendant to the effect that, he has permitted to sale his land because his land is not included in the said acquisition proceeding.

10) The plaintiffs have submitted that, the defendant is trying to alienate the suit land. The plaintiffs have not pleaded in their plaint and the said application, the name of the third person to whom the defendant is trying to alienate the suit land. They have also not pleaded about the name of the proposed purchaser, due to which the apprehension is created in their mind. However, the plaintiffs have not filed the documents pertaining to the alienation of the suit land and the name of the proposed purchaser, due to which the apprehension is created in their mind. So, I am of the view that, the plaintiffs have failed to prove that, they have apprehension of the alienation of the suit land by the defendant.

11) In view of the above discussions, it is held that, the plaintiffs have failed to prove that, they have prima faice case in their favour, balance of convenience lies in their favour and they would cause irreparable loss if, the injunction is not granted in their favour. Therefore, I answer point Nos.1, 2 and 3 in the negative.

As to the point no.4

12) In view of my findings as to point Nos.1, 2 and 3, I pass the following order :-

ORDER

- 1) The application is rejected.
- 2) The cost follows the events.

Ahmedpur.
Date :- 05.05.2021

Sd/-
(A. R. Surve)
Civil Judge Sr.Division,
Ahmedpur.