

ORDER BELOW EXH.05 IN SPECIAL CIVIL SUIT NO.12/2024
(Sharif Khan Vs. Akhil)
(Order Passed On the Day of 13th February, 2025)
CNRNO.MHLA170000472024

Plaintiffs have filed application under Order XXXIX Rule 1 and 2 of the Civil Procedure Code submitting that, the defendant is owner and possessor of agricultural land bearing Gat No.83/A situated at village Ausa, Tq. Ausa, Dist. Latur ad-measuring 56R having four boundaries as under:-

- Towards East - Land of Peersab Hussainsab Sharif.
- Towards West - Land of Shaikh Khalil Mohammad Sharif.
- Towards South - Grave yard of Matang Samaj.
- Towards North - Land of Fayyaz Mainoddin Shaikh.

Henceforth, known as to be suit property.

2. It is further submitted by plaintiffs that, defendant agreed to sale suit property on 17.05.2023 for consideration amount of Rs.61,00,000/- in presence of witnesses. In the meeting it has been agreed between them that, the agreement which was already executed between plaintiff No.2 and defendant on 21.02.2020. The defendant accepted amount of Rs.9,00,000/- from plaintiff No.2 as earnest amount. It was further agreed between plaintiff No.2 and defendant that, plaintiff will give two cheques of amount of Rs.2,00,000/- each and defendant shall prepare necessary documents for obtaining N.A. permission and sanction lay-out of suit property. It was further agreed that, plaintiffs will pay remaining amount of Rs.48,00,000/- to defendant at the time of sale deed. Subsequently on 17.05.2023 plaintiffs and defendant executed agreement to sell in presence of witnesses. Accordingly,

plaintiffs issued two cheques of Rs.2,00,000/- each. Amount of Rs.9,00,000/- is already received by defendant. Thereby total earnest amount of Rs.13,00,000/- was received by defendant from plaintiffs. The remaining amount of consideration of Rs.46,00,000/- was to be paid by plaintiffs. However, defendant by one or other reason avoided to accept the amount. Though plaintiffs were ready and willing to give the amount to the defendant. Therefore, plaintiffs issued notices to defendant to complete the transaction and to execute sale deed in favour of plaintiffs. Thereby, plaintiffs have made out their *prima-facie* case. Balance of convenience lies in favour of plaintiffs. Irreparable loss will be cause to plaintiffs if interim injunction is not granted in their favour. Hence, it is prayed by plaintiffs that, temporary injunction be granted in their favour restraining defendant, his agents, servants and anybody else claiming through them from interfering, obstructing the peaceful possession of plaintiffs over the suit property and he may further be restrained from alienating the suit property by way of sale deed, gift deed, will deed, lease or mortgage or any other modes to any others ways to any other persons till final disposal of the suit.

3. Defendant has filed his written statement (Exh.19). He has filed pursis (Exh.20) on record to consider his written statement (Exh.19) as say to the application below Exh.5. Defendant has denied all the contentions of plaintiff in the application submitting that, it was agreed orally between plaintiffs and defendant to sale the suit property to plaintiffs for consideration of Rs.1,00,00,000/-. It required heavy stamp duty. Therefore, the amount of consideration was fixed to Rs.61.00,000/-. Plaintiffs agreed for the

same and they gave amount of Rs.15,00,000/- as an earnest amount to defendant and remaining amount of Rs.46,00,000/- was to be paid within six months from the date of agreement to sell. The sale deed of the suit property was to be done after sanction of N. A. lay-out. It was agreed that, the expenses for N. A. lay out would be done by plaintiffs. However, plaintiffs failed to pay the expenses required for N. A. lay-out. Therefore, N. A. lay-out was not sanctioned and file was rejected. Thereby, the agreement to sell dated 17.05.2023 subsequently got cancelled. The defendant has issued notice to plaintiff No.1 on 05.12.2023 to complete the agreement to sell by paying remaining consideration amount to the defendant. However, plaintiffs failed to do so. Therefore, plaintiffs have not shown their ready and willingness to purchase the suit property according to the terms and conditions of agreement to sell. The ownership and possession of the suit property is with the defendant. Hence, plaintiffs have failed to prove their *prima-facie* case. The balance of convenience does not go in favour of plaintiffs. Hence, the defendant prayed to reject the application of plaintiffs.

4. In view of averments made by plaintiffs and denied by defendant following points arose for my determination along-with my findings thereon are as under:-

<u>POINTS</u>	<u>FINDINGS</u>
1. Do plaintiffs prove <i>prima-facie</i> case in their favour?	No.
2. Do plaintiffs prove balance of convenience in their favour ?	No.

POINTS

3. Do plaintiffs prove that, they will suffer irreparable loss, if temporary injunction is not granted in their favour?
4. What order ?

FINDINGS

No.

The application is rejected.

:- REASONS :-

5. The plaintiff has filed original agreement to sell on record at Sr.No.1, receipt at Sr.No.2, notices at Sr.No.3 and 4, notice reply at Sr.No.5, envelope at Sr.No.6, RPAD receipts at Sr.No.7 and 8 RPAD acknowledgment at Sr.No.9 alongwith list Exh.4.

The defendant has filed 8-A extract of suit property at Sr.No.1, 7/12 extract of suit property at Sr.No.2, RPAD receipts at Sr.No.3 alongwith the list filed with the caveat No.6/2023.

6. Heard learned counsels for both the parties. The learned counsel for plaintiff argued that, already according to the agreement to sell possession of suit property is handed over to plaintiffs. The defendant is trying to interfere and obstruct plaintiffs in the suit property. It is likely that, defendant will alienate suit property to any other third person, though plaintiffs are ready and willing to perform their part by giving remaining consideration amount to the defendant. Hence, plaintiffs have proved their *prima-facie* case. The balance of convenience goes in favour of plaintiffs. Irreparable loss will be cause to plaintiffs if the application is rejected. Hence, the learned counsel for plaintiffs prayed to allow

the application restraining defendant from interfering and obstructing in the suit property and further alienating the suit property.

7. The learned counsel for defendant argued that, plaintiffs failed to perform their part. Plaintiffs have not come with clean hands before the Court. Plaintiffs have concealed material facts from this Court. Plaintiffs have failed to obtain sanction of N. A. lay-out according to the agreement to sell. Thereby, the agreement to sell came to an extinction. Thus, plaintiffs failed to prove their *prima-facie* case. Balance of convenience does not lie in favour plaintiffs. No irreparable loss will be caused to plaintiffs if the application is rejected. Documents produced on record shows that, the ownership and possession is with defendant over the suit property. Hence, the learned counsel for defendant prayed to reject the application.

AS TO POINTS NO.1 TO 3:-

8. Perused the record and documents produced on record by both the parties. On going through the agreement to sell produced on record by plaintiff at Sr.No.1 with list Exh.4 it is crystal clear that, it is mentioned in the agreement to sell that, the possession of suit property is handed over to plaintiffs. However, it is contended by plaintiffs in para No.1 of this application that, ownership and possession of the suit property is with defendant. Therefore, the contentions of plaintiffs in this application and contents of the agreement to sell are contrary to each other. Thereby, possession of plaintiffs over the suit property cannot be proved *prima-faciely* by plaintiffs. Therefore, there is no question of

interference or obstruction caused by defendant to plaintiffs in the suit property, as record shows that, the suit property is owned and possessed by the defendant. Thereby, plaintiffs failed to prove their *prima-facie* case. The balance of convenience does not go in favour of plaintiffs. No irreparable loss will be caused to plaintiffs if the application is rejected. Hence, I answer points No.1 to 3 in the negative.

AS TO POINT NO.4:-

9. In view of facts and circumstances discussed in points No.1 to 3 plaintiffs failed to prove *prima-facie* case in their favour. The balance of convenience does not go in favour of plaintiffs. No irreparable loss would be caused to plaintiffs, if the application is rejected. Therefore, the application filed by plaintiffs is liable to be rejected. Thus, in answer to point No. 4, I pass following order:-

ORDER

1. The application is rejected.
2. No order as to cost.

Date :-13.02.2025.

(P. I. Mokashi)
Civil Judge Senior Division,
Ausa.