



**ORDER BELOW EXH.5**  
**(Passed on 24<sup>th</sup> day of June 2024)**

1. This is an application filed by the plaintiff for grant of temporary injunction as per Order XXXIX Rule 01 and 02 R/w Section 151 of the Civil Procedure Code. It is the contention of the plaintiff that, the defendant is the owner and possessor of the plot admeasuring 3600 Sq. Ft. along with constructed house on it bearing property No. 2054 as per the record of Nagar Parishad Kalmeshwar, Barhmni situated in Khasra No.260/2 (hereinafter called as 'suit property')
2. It is agreed by the defendant to sell the aforesaid plot and house to the plaintiff for the consideration of Rs. 50,00,000/- the written document i.e. agreement to sale is prepared in between the plaintiff and the defendant on 30.09.2022. At the time of execution of said document, the plaintiff has paid in cash Rs. 5,10,000/- and one cheque to the defendant bearing No. 118656 drawn on State Bank of India branch Kalmeshwar worth of Rs. 5,90,000/- as an earnest amount towards the sale consideration prize of the suit property. The defendant is duly acknowledged by encashing cheque in their accounts. Both parties are bound by the terms and conditions of agreement dated 30.09.2022.
3. The plaintiff was ready to pay balance sale consideration amount to the defendant, after execution of the aforesaid documents dated 30.09.2022. In spite of several request and demand the defendant did not pay any heed to the request of the plaintiff. The plaintiff was/is ready to fulfill the legal demands of the defendant. However, the defendant is searching for prospective buyers to sale the suit properties at higher rate. Thus, it is necessary to grant temporary injunction in favour of the plaintiff, so as to

protect the interest of the plaintiff and from creating third party interest in the suit property. It is necessary to restrain the defendant by granting the injunction in favour of the plaintiff during the pendency of the instant suit. Hence, it is prayed to grant his temporary injunction application.

4. The application is strongly opposed by defendants by filing her written statement-cum-reply at Exh.13. It is her contention that, there were cordial family relation in between the plaintiff and the defendant. The defendant was in urgent need of some amount and therefore the defendant requested to the plaintiff to make contact with someone to borrow hand loan. Accordingly, the plaintiff introduced her with one Sachin Uttam Gajbhiye and consequently the plaintiff agreed to give hand loan to the defendant and after discussion the plaintiff gave hand loan Rs. 5,09,000/- by way of cheque on 30.09.2022. At the time of payment of hand loan the plaintiff in order to secure the loan conveyance the defendant to execute the nominal agreement to sale of her house and assure that, after refund the said amount the agreement will be destroyed or returned to the defendant.

5. For the security of loan the plaintiff has scribed the document and obtained her thumb impression and signature on plain bond paper. There is no any agreement of sale of the suit property in between the plaintiff and the defendant. She was also not present before the notary for notarized the document. In fact the value of the house property is more than 90,00,000/-. The agreement to sale dated 30.09.2022 is beyond the knowledge. The plaintiff has not paid cash worth of Rs. 5,10,000/- on the day of execution of agreement to sale. The plaintiff is not came with the clean hand. Therefore, he prayed to reject the application.

6. On perusal of rival pleading and documents filed by both parties for the perusal of this Court, following points arisen for my consideration and I give answer to them along with reasoning thereon :

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
01.	Does the plaintiff prove that, he has a prima facie case ?	In the affirmative
02.	Does the plaintiff prove that, the balance of convenience is lies in his favour ?	In the affirmative
03.	Does the plaintiff prove that, if the injunction is not granted in his favour, then he will suffer the irreparable loss ?	In the affirmative
04.	What order ?	As per final order.

### **REASONING**

#### **As to point Nos.01 to 04 :**

7. Heard, the learned Advocate Shri. M.C. Khangare appearing for the plaintiff. He has filed written notes of argument at Exh.16. To this written notes of argument he has submitted that, the defendant entered into an agreement to sale the suit property belonging to her. The total consideration amount is agreed at Rs. 50,00,000/-. Out of that Rs. 5,90,000/- paid to the defendant towards the part consideration amount on 30.09.2022 through a cheque. So also the plaintiff has given Rs. 5,10,000/- in cash to the defendant on the same date and thereafter the defendant has signed the agreement to sale in presence of the two panchas. In the month of February the plaintiff has issued notice to the defendant and called upon her to execute the sale-deed in favour of the plaintiff by accepting remaining consideration amount of Rs.39,00,000/-. The notice is duly served upon the defendant but she has not complied. On the contrary, he replied falsely on dated 31.05.2023. The plaintiff was/is ready to perform his part of contract, but on this and that pretext the defendant is avoiding to execute sale-deed in favour of the plaintiff. The plaintiff learned that, the defendant is going to create third party interest by alienating the suit property. Hence, there is

need to restrain the defendant from creating third party interest over the suit property.

8. The learned Advocate Shri. B. R. Sonkusre appearing for the defendant submitted that the defendant and the plaintiff are known to each other. The defendant was in need of money. Therefore, she approached to the plaintiff for loan amount. The plaintiff had issued the loan worth of Rs. 5,90,000/- and for the security of the loan he has taken nominal document of an agreement to sale. The agreement to sale was not notarized. However, by playing a fraud the plaintiff put her signatures on the some pages of an agreement to sale and in absence of her the document is notarized. He further submitted that, the plaintiff has not paid cash amount of Rs.5,10,000/- to the defendant. He has not issued any cheque worth of Rs. 5,10,000/-. The defendant has filed the copy of agreement to sale which shows that, on 30.09.2022 no any agreement to sale was notarized. The plaintiff has not come with the clean hand. He suppressed the material fact from the Court. Hence, he is not entitled to claim discretionary relief like temporary injunction. Hence, he prayed to reject the application.

9. I have gone through the pleading and documents filed by the plaintiff and the defendant in support of their contention. The plaintiff has filed on record the copy of agreement to sale, in which it is categorically mentioned that, cash amount worth of Rs. 5,10,000/- was given to the defendant from withdrawing that amount from the bank. Per contra, it is the contention of the defendant that, no such amount was paid in cash to the defendant. The defendant admitted that, she had received Rs. 5,90,000/- through cheque drawn from the State Bank of India on 30.09.2022. The document agreement to sale shows that, the plaintiff has paid cash at Rs. 5,10,000/- and cheque worth of Rs. 5,90,000/- in aggregate Rs. 11,00,000/- by the plaintiff to the defendant. The contention of the plaintiff is supported with the agreement to sale.

10. The defendant tried to bring on record that, there is discrepancies in the agreement to sale. But, to establish these discrepancy its required a evidence. At this stage, from the agreement to sale and the pleading it reveals that, the plaintiff has paid Rs. 5,90,000/- through a cheque amount which is not denied by the defendant. So also the defendant has admitted his signature along with the witnesses on the agreement to sale. The plaintiff has issued notice in the month of February 2023 then in the month of May 2023. After receiving the second notice the defendant has not acted upon notice. On the contrary, he has replied falsely and first time denied the agreement to sale in favour of the plaintiff.

11. In spite of several request and demand, the defendant did not paid any heed to the request of the plaintiff. The plaintiff is ready to pay the remaining consideration amount. There is apprehension in the mind of the plaintiff that, for the more prize the defendant may dispose of the suit property by accepting the more money from others.

12. Prima facie the plaintiff has established that, he has paid Rs. 11,00,000/- to the defendant towards the token Bayana through the cash and by way of cheque. After the repeated request, the defendant intimated to the plaintiff to accept remaining consideration amount and execute the sale-deed of the suit property in favour of him. But, they are not willing to perform their part of contract. The conduct of the defendant shows that, they do not wants to sale the suit property to the plaintiff and in such a scenario the apprehension that the defendant will be sell out the suit property to the third person become strong.

13. If the suit which is filed by sisters of the defendant is decreed even then the plaintiff is entitled to purchase the share of the defendant. But if the defendant succeed to dispose of the suit property then definitely the plaintiff will suffered irreparable loss, which cannot be compensated in terms of money. As such the plaintiff established that, he has a prima facie case. Balance of convenience also lies in his favour and if injunction is not granted

in his favour then the plaintiff will suffer irreparable loss. Hence, I answer point Nos. 1 to 3 in affirmative and to answer point No.4, I proceed to pass following order :

**ORDER**

1. Application (Exh.5) is hereby allowed.
2. The defendant, his agent, servant, relatives or any person claiming through him are hereby restrained from creating any third party interest over the suit property till the disposal of the suit.
3. No order as to costs.

Saoner  
Date : 24.06.2024

(S. A. Sardar)  
Civil Judge Sr. Dn. Saoner  
Tahsil Saoner, District Nagpur

**CERTIFICATE**

I affirm that the contents of this PDF file of order are word to word as per original order.

Smt. A. J. Chichate  
*Stenographer(Grade-II)*