

**ORDER BELOW EXH. 05**  
***(Order passed on 02<sup>nd</sup> day of April, 2019)***

[01] The plaintiffs have filed present application as per Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction thereby restraining the defendant from alienating and creating third party interest over the suit field bearing survey no.63 total area 2.16 H.R. out of it northern sides 0.81 H.R., land having Class-I occupancy of mauza Marazghat (Rithi), Tah. Umrer, Dist. Nagpur till final decision of the suit. (The property described above would hereinafter be referred to as the “suit property”).

[02] On the basis of facts and documentary material placed on record following points arise for my determination to which I have recorded my findings for the reasons to follow.

<b>Sr.No</b>	<b>Points</b>	<b>Findings</b>
1	Whether prima-facie case lies in favour of plaitniff ?	<b>In the affirmative</b>
2	Whether balance of convenience lies in favour of plaitniff ?	<b>In the affirmative</b>
3	Whether irreparable injury would occassion to plaintiff, if temporary injunction is not granted ?	<b>In the affirmative</b>
4	What order ?	<b>Application is Allowed.</b>

**REASONS.**

[03] Perused application. Despite of service of summons as per order V Rule 20 of CPC the defendant failed to appear in the matter. Hence the suit proceeded ex-parte against the defendant. Heard Ld. Counsel for the plaintiff Smt. Bhuyar. None appeared to argue the side of the defendant.

**As to point no.1 to 4 :-**

[04] The above points are interlinked to each other, hence are taken for discussion and determination at once. In order to entitle for injunction it is incumbent upon the plaintiff to show that they have prima facie case and further also to show that the balance of convenience lies in grant of the temporary injunction application. Again the plaintiff are duty bound to show that if the temporary injunction is not granted then irreparable injury would occasion to them. Prima facie case means a case that there is serious question to be tried in the suit and that on the facts before the court, there is possibility of the plaintiff being entitled to the relief ask by them. Likewise it must be shown that the courts interference is necessary to protect the plaintiff from that species of injury which the court feels irreparable.

[05] Considering the ingredients necessary for granting the relief of T.I. if we go through the pleading as well as documentary material supplied by the plaintiff on record, it has been averred that the defendant being owner and possessor of the suit property has

entered into an agreement to sale out the same for valuable consideration of Rs.28,00,000/- on 06.09.2016. It is averred that as per agreement the defendant received part consideration amount of Rs.7,01,000/-.

[06] As per decided terms it was for defendant to collect all necessary documents and to execute sale deed to till 23/08/2017. However despite of receiving huge amount of Rs.7,01,000/- defendant didn't perform his part of contract. The plaintiff was and is ready and willing to perform his part of contract. It is averred that defendant is avoiding the contract. If defendant succeeded to alienate the suit property during existence of the contract with the plaintiffs, the plaintiffs will suffer irreparable loss. Hence, the plaintiffs submitted that the application may be allowed and the injunction as prayed may be granted.

[07] As discussed above despite of receiving suit summons, defendant failed to contest the suit. In support of pleading plaintiffs relied on the copy of agreement to sale dt.06.09.2016. They also relied on revenue documents, the public notice, the legal notice issued to the defendant and the notice reply received from defendant. Perusal of the recitals of agreement to sale, prima facie it goes to show that the defendant has entered into an agreement to sale out the property in favour of the plaintiff. Likewise from the recitals of agreement to sale, it goes to show that out of total consideration of

Rs.28,00,000/- plaintiff has paid huge amount of Rs.7,01,000/- to the defendant.

[08] Moreover the defendant during his notice reply dt. 05/08/2017 has specifically admitted the contract dt.06/09/2016. He also admitted the receipt of part consideration amount of Rs.7,01,000/- stated by plaintiff. No doubt the defendant during his notice reply stated that it is the plaintiffs who failed to perform their part of contract, however at this stage it cannot be decided as to who is at fault. Thus, as contended by the plaintiff and the recitals of agreement to sale, the facts admitted to defendant, huge amount is seen to have been parted from plaintiff. Hence, in such circumstances if during pendency of suit defendant succeeded in alienating or creating third party interest in respect of suit property then it may result in multiplicity of the proceeding and the very purpose of present suit will be frustrated. Thus, the apprehension created in the mind of plaintiff is seen to be a genuine one.

[09] Thus so far as relief regarding alienation or creation of third party interest is concern, the pleading as well as material put-forth by plaintiff remain unchallenged. The contention put-forth by the plaintiffs is seen to be supported with the sworn statement. Thus, from the entire documents placed on record, it can be said that the plaintiffs have prima facie case for claiming the relief regarding alienation and creation of third party interest. Prima facie case follows

balance of convenience. So far as irreparable injury is concern if temporary injunction regarding alienation of property as prayed by the plaintiffs is not granted then definitely plaintiffs will suffer irreparable loss which cannot be compensated in terms of money. On the other hand defendant can establish his claim on merit. Hence, considering the discussion given supra, I answer point no.1 to 3 in affirmative and in answer to point no.4 I proceed to pass the following order.

**ORDER.**

- 1] The application (Exh.05) for temporary injunction is allowed.
- 2] Defendant through his agents, servants, and representatives is hereby temporarily restrained from alienating, transferring or creating third party interest in respect of suit property till final decision of the suit.
- 3] Costs in cause.
- 4] Dictated and pronounced in open court.

Umrer.  
Date : 02/04/2019

**(S. K. Fokmare)**  
Civil Judge Senior Division, Umrer.

Certificate

"I affirm that the contents of this P.D.F. file order is word to word same as per original order".

Name of Stenographer : **Mr. Mahendranath D. Nagpure**  
Stenographer (Lr.Gr.)

Court Name : Civil Judge Senior Division, Umrer

Date : 02/04/2019