

Spl. Civil Suit 106 of 2024

Yogesh Vs. Bapurao

ORDER BELOW EXH. No. 05

1] Plaintiff / applicant has filed this application requesting to grant temporary injunction to restrain the defendant / respondent from alienating the suit property to third person and from mortgaging suit property with any financial institution.

2] Suit property is the field bearing Gat no. 686/1, Admeasuring 1.14 HR of village Bela, Tah. Umred. Its four boundaries are mentioned in paragraph no. 2 of the plaint.

3] Shortly put the story of plaintiff is :-

a) Defendant has agreed to sell out suit property to him and has executed agreement of sale on 11/08/2023. Rs. 36 lakh has been fixed as the sale consideration. He paid Rs. 7 Lakh towards part consideration to defendant. It was agreed that sale deed would be executed within four months from the date 11/08/2023. Agreement was notarized. Defendant has agreed to get the suit property measured and to clear the crop loan outstanding on the suit property, before execution of sale deed.

b) Thereafter defendant was in financial need. Therefore plaintiff paid him Rs. 3 Lakh by cheque and Rs. 2 Lakh in cash in the month of December. Defendant got the suit property measured through Dy. Supdt. of Land Record and handed over copy of measurement to the plaintiff.

However defendant failed to clear the outstanding crop loan. Meanwhile plaintiff came to know from Sub Registrar Office, Umred that Government valuation of suit property is Rs. 73,86,300/-. It is higher than the sale consideration fixed in the agreement of sale. Therefore he brought this fact to the notice of defendant and with the consent of defendant, he approached the authority concerned with request to reduce such valuation. However Town Planning Authority has informed the defendant through letter dated 06/03/2024 that Government valuation can not be reduced. Defendant communicated this fact to the plaintiff. Plaintiff was and is ready and willing to execute the sale deed inspite of such additional burden of Government Stamp Duty.

c) However defendant sent notice dated 29/07/2024 to plaintiff asking him to execute the sale deed within a week. When plaintiff inquired with him about it, he expressed apology and told him not to reply it. At that time, plaintiff asked him to clear the crop loan. However defendant has not done so. Therefore he sent notice dated 10/12/2024 to defendant asking to execute the sale deed. Despite the defendant received such notice on 17/12/2024, he did not comply with it. Therefore the suit for Specific Performance of Contract, Possession and Injunction is filed on 21/12/2024. In such suit, this application is filed seeking temporary injunction.

4] Defendant has opposed the application by his W.S. cum reply vide Exh. 22. In para wise reply, he has denied the pleadings of the plaintiff. In his specific reply, he contends

that four months time was of essence of the contract. He has admitted to have received Rs. 10 Lakh from plaintiff towards part consideration. However he submits that it is nowhere mentioned in the agreement of sale that defendant had to clear the crop loan. In fact agreement of sale requires registration to be used for the purpose of Section 53-A of Transfer of Property Act. Since it is not registered, it is not admissible. Amount of Rs. 29 Lakh is the balance consideration. However in the plaint, it is pleaded that balance consideration is Rs. 24 Lakh. It was not agreed that sale deed would be executed only after taking steps to get the Government valuation of the suit property reduced. In fact four months time was of the essence of the contract. Plaintiff failed to get the sale deed executed within that time by paying the balance consideration. Defendant is a senior citizen and requires amount for medical treatment and legal necessities of his family. Suit will take number of years for its disposal. Plaintiff has already made alternative prayer for refund of earnest amount. Therefore no loss would be caused to the plaintiff even if this application is rejected. With such contentions, defendant has requested to reject this application.

5] I have heard oral arguments of Ld. Adv. Madam Chichghare for plaintiff and Adv. Shri. B. B. Pantawane for defendant.

6] Shri. Pantawane has relied upon following rulings to support his submissions :-

a) **Urvashi Agrawal Vs. Kushagr Ansal AIR 2019 SC 1280.** It was the suit for Specific Performance of Agreement. It was filed 12 years after the date which was fixed in the agreement for execution of the sale deed. Defendants therein were pursuing the application for permission before the Land Development Officer. In that background, it was observed that time fixed for execution of the sale deed could not stand extended merely because defendants were pursuing such application. Thus suit was dismissed.

b) **FGP Ltd. Vs. Saleh Hooseini Doctor 2009(5) All MR 990.** It was also the suit for specific performance of contract. Defendants therein also filed suit for possession of the property from the plaintiff on the ground of reasonable and bonafide requirement. Question involved in it was about the applicability of the provisions of Section 53-A of Transfer of Property Act. It was observed that 10 years after the alleged agreement of sale, specific performance was asked for and doctrine of part performance could not be invoked in the facts and circumstances of that case.

c) **UTO Nederland Vs. Tilak Nagar Industries Ltd. AIR Online 2025 BOM 473.** It is observed in this ruling that a party is not entitled to an order of injunction as a matter of right. The grant of interlocutory injunction is a remedy which is discretionary in nature. However, such discretion has to be exercised on the touchstone of trinity test i.e prima facie case, the balance of convenience and irreparable loss.

d) Nitin Kale Vs. Manikrao Malgunde 2025(2) Civil LJ 851. It was the suit for specific performance of contract. Agreement of sale in the form of visar pawti was of the year 2012. Suit was filed in the year 2021. There was nothing on record to show that after the year 2012, plaintiff sent any notice or took any steps to take the transaction further. Therefore the defendant no. 1 executed the sale deed in favour of defendant no. 2. Thereafter such suit was filed. In that background, it was observed that there was no prima facie case for grant of temporary injunction.

7] Having kept in mind the above observations and the arguments which have been advanced on the line of plaint pleadings and contentions in the WS/reply, I have perused the record.

8] Following points arise for my consideration and I record my findings thereon with reasons as follow :

| <u>Sr. No.</u> | <u>Points</u> | <u>Findings</u> |
|----------------|--|----------------------------|
| 1. | Whether plaintiff has made-out prima-facie case ? | Yes |
| 2. | Whether balance of convenience lies in favour of plaintiff? | Yes |
| 3. | Whether plaintiff would suffer an irreparable loss in case of the rejection of this application? | Yes |
| 4. | What order ? | As per final order. |

REASONS

As to Points No. 1 to 4 :-

9] These points are considered together to avoid repetition of discussion.

10] Photo copy of agreement of sale is at sr. no. 1 vide list Exh. 4. With reference to agreement of sale, defendant has contended that time was of essence of the contract. If contentions in the W.S. are read alongwith notice dated 29/07/2024 issued by defendant to plaintiff, it appears that defendant has admitted the execution of agreement of sale.

11] Further contention of the defendant about such agreement of sale is that such agreement is not registered and therefore it is not admissible for the purpose of attracting the provisions of Section 53-A of Transfer of Property Act.

12] It is true that agreement of sale of date 11/08/2023 is the notarized document. It is not the registered document. However explanation to sub-section (2) of Section 17 of Registration Act shows that a document operating to effect a contract for the sale of immovable property shall not be deemed to require registration by reason only of the fact that such document contains a recital of the payment of any earnest money or any part of purchase money.

13] Section 53-A of Transfer of Property Act provides for the doctrine of part performance. One of the conditions mentioned in the Section is that the transferee has taken

possession of the property in part performance of the contract. In the present suit, plaintiff has prayed for possession of the suit property alongwith execution of the sale deed. Thus it is not the case that plaintiff has taken possession of the suit property from the defendant. Therefore Section 53-A of TP Act does not come into the picture. For the above reasons, I am of the prima facie opinion that above unregistered agreement of sale can be considered by the court while deciding this application.

14] Agreement of sale of date 11/08/2023 shows that defendant has agreed to sell the suit property to plaintiff for Rs. 36 lakh. Out of that Rs. 2 lakh by cheque, Rs. 4 lakh by cheque and Rs. 1 lakh in cash were paid by the plaintiff to the defendant by the date 11/08/2023. Thus Rs. 7 lakh was paid by the plaintiff to the defendant by the date of agreement of sale.

15] Agreement of sale of date 11/08/2023 shows that it was agreed that sale deed would be executed within four months from the date 11/08/2023. However the defendant has undertaken the responsibility to get the suit property measured and to get the loan amount i.e. encumbrance on the suit property cleared before the execution of the sale deed. Recitals to that effect are as- सदर मालमत्तेचे विक्रीपत्र रजिस्ट्रर्ड करण्याकरिता लागणारे दस्तऐवज गोळा करण्याची जबाबदारी लिहून देणार माझेवर आहे. दस्तऐवज वेळेच्या आत गोळा न केल्यास संपुर्ण दस्तऐवज जमा होईपर्यंत व शेतीची मोजमाप होईपर्यंत सदरहू करारनामा अस्तित्वात राहिल.....सदर शेतजमिनीवर असलेले कर्ज परतफेड करण्याची जबाबदारी

लिहून देणार यांची राहिल.

16] Above recitals show that four month time from the date of agreement of sale, was fixed for the execution of sale deed in the agreement. However it is also specifically mentioned further in the agreement itself that such agreement shall remain in existence till all the documents required for execution of sale deed are collected by the defendant.

17] 7/12 extract of suit property is at sr. no. 1 vide list Exh. 9. It is the downloaded copy of date 23/12/2024. It shows that suit property stands in the name of defendant. There is entry in its other right column that the suit property has been mortgaged to the Bank of Badoda, Branch-Bela for the loan amount. There is one more entry of crop loan. This itself shows that by the date 23/12/2024, defendant has not paid off such loan and has not got such encumbrance removed. It is not the case of the defendant in the W.S. that defendant has paid off such loan and has made the suit property free from such encumbrance. Thus prima facie it shows that though the defendant has undertaken the responsibility to clear such loan, yet he has not done so. Therefore prima facie it appears that all the documents required for the execution of sale deed, are not made available by the defendant. It is true that defendant had got the suit property measured through Dy. SLR as undertaken. However N.O.C. showing the clearance of Bank loan is not made available by the defendant. Thus it appears prima facie that it is difficult to execute the sale deed of the land which

has been mortgaged to the bank, in the absence of such document. Therefore if the recitals in marathi which I have extracted from the agreement, are considered in this background, prima facie it appears that time was not the essence of the contract.

18] Plaintiff contends that in the month of December 2023, he paid Rs. 3 lakh by cheque and Rs. 2 lakh in cash to the defendant as defendant requested him to pay such amount. Defendant has admitted the payment of Rs. 3 lakh by cheque, in his notice dated 29/07/2024. However he has denied to have received cash amount of Rs. 2 lakh. Thus plaintiff is saying that he has paid in all Rs. 12 lakh towards part consideration. Whereas, defendant is saying that he received Rs. 10 lakh from the plaintiff towards part consideration. Agreement of sale shows that in the past also, plaintiff paid cash amount of Rs. 1 lakh to defendant. Thus it appears prima facie that such subsequent payment of Rs. 2 lakh in cash is probable. It is true that it is the point which needs evidence to be commented upon with certainty.

19] Defendant sent noticed to plaintiff on 29/07/2024 calling upon him to get the sale deed executed. It is true that plaintiff did not send reply to it. However thereafter plaintiff sent notice on date 10/12/2024 to defendant calling upon him to execute the sale deed by receiving the balance consideration. It is specifically mentioned in the notice that bank loan encumbrance is still there in the revenue record. As I have already mentioned that it appears at this stage of the

matter that defendant has not cleared such bank loan on the suit property.

20] Copy of valuation report dated 15/02/2024 issued by Sub-Registrar, Umred is at sr. no. 6 vide list Exh. 4. It shows that defendant moved the application bearing no. 179/2024. He has been informed that Government valuation of the suit property is Rs. 73,86,300/- . This document prima facie probabalizes the contentions of the plaintiff that step was taken to apply for reducing the Government valuation. In this matter, sale consideration mentioned in the agreement of sale is Rs. 36 lakh. Whereas Government valuation of the suit property is higher. Plaintiff has pleaded in the plaint that he is ready and willing to get the sale deed executed by paying the balance consideration to the defendant and is also ready and willing to bear the additional burden of stamp duty as per the Government valuation.

21] Plaintiff has pleaded in the plaint and has contended in this application that he has learnt from the reliable source that defendant is trying to dispose of suit property to third person. With reference to this, defendant has contended that such apprehension is baseless because it is not mentioned as to whom defendant is trying to sell out suit property. It is true that plaintiff has not given particulars of such apprehension. However notice of date 29/07/2024 issued by defendant itself shows that in case the plaintiff fails to get the sale deed executed, he will dispose of the suit property and plaintiff will not be entitled for the refund of

earnest amount. In the W.S. also, it is contended that defendant is senior citizen and needs amount for treatment and for family necessities. Thus such contentions are prima facie indicative of his intention to dispose of the suit property.

22] Therefore as a result of above discussion of the record of this file, I come to the prima facie conclusion that plaintiff has the prima facie case in his favor. He has paid considerable amount towards the part consideration to the defendant. He took legal step to get the Government valuation of the suit property reduced for the purpose of execution of sale deed. Defendant has not yet cleared the bank loan on the suit property. Therefore it appears prima facie that balance of convenience lies in favor of plaintiff and he will face irreparable loss in case this application is rejected. Thus I answer above points accordingly. With this I proceed to pass following order.

: ORDER :

- 1 The Defendant is temporarily restrained from creating third party interest in the suit property, till the disposal of the suit.
2. Cost in cause.
3. Application Exh. 5 is accordingly allowed.

Date : 9th December, 2025.

(S. G. Landge)
Civil Judge, Senior Division
Umred, District Nagpur.

