

MHNG130007422022



Reg.C.S. No. 26/2022.
Bilkis Bee Wd/o. Wakeel
Ahmad and others V/s.
Mumtaj Ahmad S/o.
Mohammad Ayub and others

Judge Code: MH02592

ORDER BELOW EXH.44
(Passed on : 24/02/2025)

1. The plaintiffs have filed present suit for declaration, permanent injunction and specific performance of contract against defendants. They have filed present application under Order 39 Rule 1 & 2 of the Code of Civil Procedure for temporary injunction against defendants restraining the defendant No.6 from registering any conveyance or deeds etc. with respect to transferring, assigning rights, bequeathing property etc. and so also restraining defendants from dispossessing plaintiffs from the suit property and from creating any third party interest over the suit property through themselves or their agents, attorneys, assignees, servants etc. In spite of sufficient opportunities defendants have failed to file their say. Hence, application proceeded without the say of defendants.
2. Heard learned advocate for the plaintiffs. Defendants fails to argue on application in spite of sufficient opportunities.
3. The disputed property is the suit field property bearing Survey (Khasra) No. 122, admeasuring about 0.93 H.R., Patwari Halka No. 30 of Village-Dongartal, Tahsil-Ramtek, District-Nagpur and bounded as under East : Devlapar Village, West : Cannel (Nala), North : Khasra No.121, South : Cannel (Nala). (Here-in-after referred to as the 'suit property' for the sake of brevity) more particularly described in para No.1 of the main application.

4. By way of this application plaintiffs have contended that, they have filled present suit for declaration, permanent injunction and specific performance of contract against defendants. The suit property was purchased by their father i.e. Late Wakeel Ahmad S/o Moinumuddin Ansari from the Late Badrunisa wd/o Mohd. Ayub (mother of defendant Nos.1 to 4), Late Mustak Ahemad S/o Mohd. Ayub (husband and father of defendant Nos. 5(a) to 5(e).) and defendant Nos.1 to 4. As per negotiations, the total consideration amount of the suit property was fixed and agreed to Rs.59,287/-. Accordingly, on 01.04.2004 agreement to sale of the suit of property was executed between them. On the same day, Late Badrunisa wd/o Mohd. Ayub (mother of defendant Nos.1 to 4), Late Mustak Ahemad S/o Mohd. Ayub (husband and father of defendant Nos. 5(a) to 5(e).) and defendant Nos.1 to 4 have received Rs.50,000/- from the father of the plaintiffs i.e. Late Wakeel Ahmad S/o. Moinumuddin Ansari and they handed over the possession of the suit property to the father of the plaintiffs i.e. Late Wakeel Ahmad S/o. Moinumuddin Ansari.

5. It is further contended that as per the aforesaid agreement to sale/Isar patra the Late Badrunisa wd/o Mohd. Ayub (mother of defendant Nos.1 to 4), Late Mustak Ahemad S/o Mohd. Ayub (husband and father of defendant Nos. 5(a) to 5(e).) and defendant Nos.1 to 4 have received the sale consideration of Rs. 50,000/- and ready to execute sale deed within one month after conversion of suit property from Class-II to Class-I land. The possession of the suit property was given to the father of the plaintiffs. Therefore, the plaintiffs being the legal heirs of the deceased Wakeel Ahmad S/o. Moinumuddin Ansari, time to time

visited the defendants for converting the suit property from Class-II to Class-I land and for executing sale deed but defendants fails to do so.

6. It is further contended that it came to the knowledge of the plaintiffs that the suit property is converted from the class-II to class-I land on 10.10.2017. The defendants due to their malafied intension did not given any information to the plaintiffs about the same and try to sale suit property to another person. Thereafter, in the month of January 2022, when plaintiffs got knowledge about the same applied for the 7/12 abstract of the suit property. That time it came to their knowledge that the suit property is converted from the class-II to class-I land on 10.10.2017. Therefore, on 26.04.2022 they issued legal notice to the defendant Nos.1 to 5 through their advocate calling upon them to execute sale deed of the suit property in favour of plaintiffs after accepting the balance consideration amount. However, defendants fail to comply as agreed upon. Therefore, plaintiffs constrained to file present suit.

7. It is further contended that after filling of present suit, pending temporary injunction application Exh.5 against the defendants, defendant Nos.1 to 4 and 5(a) sold the suit property by virtue of register sale deed dated 20.06.2022 to the defendant No.6. The name of defendant No.6 has also mutated in the revenue records of the suit property. The defendant No. 6 is trying to create third party interest in the suit property and the defendants are trying to disturbing possession of the plaintiffs over the suit property.

8. It is further, contended that plaintiffs are having the prima-facie case in their favor not only this, it is utmost necessary to restrained the defendants Nos.6 from registering and executing any

deed of convenience, the agreement to sale, sale deed etc. of the suit property to any third person and so also restraining defendants from disturbing the peaceful possession of the plaintiff over suit property and accordingly, prayed allowing the present application.

9. On the said application say of the defendants were call on. However, inspite of sufficient opportunities they failed to file their say/reply. Hence, application proceeded without their say.

10. After considering the contentions along with supporting documents, following points arise for determination. My findings thereon with reasons are recorded as follows:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the plaintiffs have prima-facie case?	In the affirmative.
2	Whether balance of convenience lies in favour of the plaintiffs?	In the affirmative.
3	Whether irreparable loss will cause to the plaintiffs, if temporary injunction as prayed not granted?	In the affirmative.
4	What Order ?	As per final order.

:: REASONS ::

11. In view of these points, the learned advocate for the plaintiffs argued as per his application. Therefore, to avoid the repetition, the same is not reiterated here further. The defendants fails to argue. Hence, the application proceeded without their argument.

AS TO POINT NOS. 1 TO 3 :

12. All these points are interconnected with each other

hence, to avoid repetition of reasons all are discussed together. For obtaining equitable and discretionary relief of temporary injunction, in that respect plaintiffs have to show that, they have prima facie case. Therefore, first of all, it is necessary to see, whether plaintiffs have made out prima facie case or not.

13. This is the suit filed by the plaintiffs for declaration, permanent injunction and specific performance of contract against defendants regarding the suit property i.e. Survey No.122. Plaintiffs contended that they are legal heirs of Late Wakeel Ahmad S/o Moinumuddin Ansari, who has purchased the suit property i.e. Survey No.122 from Late Badrunisa wd/o Mohd. Ayub (mother of defendant Nos.1 to 4), Late Mustak Ahemad S/o Mohd. Ayub (husband and father of defendant Nos. 5(a) to 5(e).) and defendant Nos.1 to 4 for the total consideration amount of Rs.59,287/-. Accordingly, the agreement to sale was executed on 01.04.2004 and on the same day they have received part consideration amount of Rs. 50,000/- from the father of the plaintiffs and handed over possession of the suit property i.e. Survey No.122 to the father of the plaintiffs. It was agreed to execute sale deed within one month from the conversion of land from Class-II to Class-I. However, defendants fails to execute the sale deed as agreed, therefore, plaintiffs are construed to file present suit.

14. The plaintiffs have placed on record copy of Agreement to Sale dated 01.04.2004. The said agreement prima facie shows that in the year 2004, the said Agreement to Sale was executed by and between the predecessor of the plaintiffs i.e. Late Wakeel Ahmad S/o Moinumuddin Ansari and Late Badrunisa wd/o Mohd. Ayub (mother of defendant Nos.1 to 4), Late Mustak Ahemad S/o Mohd. Ayub

(husband and father of defendant Nos. 5(a) to 5(e).) and defendant Nos.1 to 4. Further, it prima facie shows that the predecessor of the plaintiffs i.e. Late Wakeel Ahmad S/o Moinumuddin Ansari has purchased the suit property i.e. Survey No.122 from Late Badrunisa wd/o Mohd. Ayub (mother of defendant Nos.1 to 4), Late Mustak Ahemad S/o Mohd. Ayub (husband and father of defendant Nos. 5(a) to 5(e).) and defendant Nos.1 to 4 for the total consideration amount of Rs.59,287/- and the part consideration amount Rs.50,000/- was paid to them and the possession of the suit property was handed over to the father of the plaintiffs. Further it prima facie shows that hat it was agreed by and between the parties to execute sale deed within one month after conversion of suit property from Class-II to Class-I land. Further, the plaintiff has placed on record 7/12 abstract, Goan Namuna 8, Mutation Entry No.615 of the suit property i.e. Survey No.122, which prima facei shows that the name of original defendants are mutated in revenue records and the suit property is converted from the class-II to class-I land on 10.10.2017.

15. It is the contention of the plaintiffs that during proceeding the defendant Nos.1 to 4 and 5(a) have sold the suit property to the defendant No.6. The name of the defendant No.6 is mutated in revenue record and taking advantage of this he is trying to create third party interest. So also, defendants are trying to obstruct the possession of plaintiffs. To show this the plaintiffs have placed on record sale deed dated 20.06.2022 executed and register at serial No.176/2022. This prima facie shows that during the proceeding the defendant Nos.1 to 4 and 5(a) have sold the suit property to the defendant No.6. Further the plaintiffs have placed on record vide list Exh. 50 the 7/12 abstract of the suit property and the

order dated 09.10.2023 passed by the Nayab Tahsildar, Ramtek in RTS No.59/2022-23 shows that the name of the defendant No.6 is mutated in the revenue records of suit property.

16. As discussed earlier, the record prima facie shows that in the year 2004, Agreement to Sale was executed by and between the parties and the predecessor of the plaintiffs i.e. Late Wakeel Ahmad S/o Moinumuddin Ansari has purchased the suit property i.e. Survey No.122 from Late Badrunisa wd/o Mohd. Ayub (mother of defendant Nos.1 to 4), Late Mustak Ahemad S/o Mohd. Ayub (husband and father of defendant Nos. 5(a) to 5(e).) and defendant Nos.1 to 4 for the total consideration amount of Rs.59,287/- and accordingly part consideration amount i.e. Rs.50,000/- was paid and the possession was handed over to the father of plaintiff. The plaintiffs have filled present suit for the specific performance of the contract. The record shows that during the proceeding the defendant Nos.1 to 4 and 5(a) have sold the suit property to the defendant No.6 and the name of the defendant No.6 is mutated in revenue record. Therefore, there is possibility that on that basis, the defendant No.6 can create third party interest over the suit property.

17. Plaintiffs have shown prima-facie case in their favour. The plaintiffs are in possession of suit property hence, if possession of the plaintiffs is disturbed or if suit property is sold, it will create in inconvenience to the plaintiffs as the balance of convenience is in favour of plaintiffs. In such circumstances, when plaintiff has established the prima facie case against the defendants, the right of the plaintiffs should be protected. Plaintiff has filed the present suit for the respect performance of contract considering this has if the

present application is not allowed it made caused irreparable lost to the plaintiffs. The prima-facie case and the balance of convenience is in favor of plaintiff. Therefore, I come to said the conclusion of necessary point perhaps 1, 2 and 3 for the affirmative respectively.

18. After, considering available material on record at this pre trials stage. It appears that plaintiffs have established their prima-facie case. Balance of convenience is also lies in their favor. The same way the plaintiffs will be prove to irreparable lost. If temporary injunction is not granted. Therefore, holding the same accordingly in the interest of justice, I proceed to pass the following order.

19. In view of the discussion made above, the following order is passed.

ORDER

- i) Application below Exh.5 is partly allowed.
- ii) The defendants or anybody on their behalf are hereby restrained from disturbing the possession of plaintiffs and defendant No.6 is hereby restrained from alienating, selling transferring and/or creating third party interest in the suit property Survey (Khasra) No. 122, admeasuring about 0.93 H.R., Patwari Halka No. 30 of Village-Dongartal, Tahsil-Ramtek, District-Nagpur, till the disposal of suit.
- iii) Costs in main cause.

(Pronounced in open Court)

Ramtek
Date : 24/02/2025

(Smt. D. S. Saindane)
2nd Jt. Civil Judge Junior Division,
Ramtek.