

MHNG130024332023



Special Civil Suit No. 185/2023
(Ajay Babulal Khandelwal vs. Sanjay Shalikram Raut)
(Appearance for Plaintiff Ld. Advocate Shri. R.R. Kishnani
Appearance for Defendant Ld. Advocate Shri. P. S. Pudke)

ORDER BELOW EXH. 5
(Passed on this 06th day of December, 2023)

This is an application by plaintiff under Order 39 R(1)(a) of Code of Civil Procedure (CPC) for an injunction restraining defendant from alienating suit property further till the decision of the suit.

2. It is the case of the plaintiff that, he is a businessman and he is in the business of mining and real estate. He entered into an agreement to sale dated 18.02.2021 with defendant to purchase an agricultural property bearing Survey No. 402, an area admeasuring 2.98 Hecter situated at village Tekadi, Tah. Parseoni, Dist. Nagpur. The defendant had agreed to sell suit property to the plaintiff for the total consideration of Rs.3 Crore. In pursuance of agreement to sale, the plaintiff had paid Rs.21 Lakh in cash as earnest money to the defendant at the time of execution of agreement to sale. It was agreed between the parties that the remaining consideration amount will be paid by the plaintiff to the defendant at the time of execution of sale-deed.

3. It is further case of the plaintiff that after execution of agreement to sale the plaintiff had discovered that there were certain

discrepancies in the revenue record in respect of suit property. Thereafter, plaintiff took necessary steps on the request of the defendant to rectify the revenue record. Accordingly, revenue record has been rectified. Thereafter, the plaintiff approached to the defendant to execute the sale-deed on 21.10.2022. However, the defendant avoided to execute the sale-deed. Thereafter, the plaintiff again approached to the defendant on 28.10.2022 to execute sale-deed but defendant again avoided and asked plaintiff to wait for another a month.

4. It is further case of the plaintiff that on 06.11.2022, defendant sent a legal notice and thereby refused to execute sale-deed by making false allegations against the plaintiff.

5. It is further case of the plaintiff that thereafter, plaintiff sent notice reply on 16.11.2022 and showed his willingness to pay remaining consideration amount. However, defendant did not pay heed to execute the sale-deed in favour of the plaintiff and defendant stated that he has an another offer of higher consideration amount from third party and therefore he is not interested to execute the sale-deed in favour of plaintiff. Therefore, under these circumstances, plaintiff is constrained to file present application.

6. On the other hand, the defendant has filed his say and written statement below Exh.16. It is specific case of the defendant that suit is not maintainable in the eyes of law as plaintiff has not approached to the court with clean hands. The plaintiff is not agriculturist, therefore, he is not entitled for specific performance of contract as per Section 63 of Bombay Tenancy and Agricultural Act,

1948. It is further case of the defendant that agreement to sale was executed on insufficiently stamp paper therefore, said agreement to sale is not admissible in the evidence and therefore, suit is not maintainable.

7. It is further case of the defendant that agreement to sale was executed between them and earnest amount of Rs.21 Lakh had been received by the defendant. It was agreed between the parties that sale-deed was to be executed on or before 18.10.2022. However, despite of repeated requests to the plaintiff by the defendant, plaintiff failed to pay remaining consideration amount, therefore, defendant has cancelled agreement to sale by issuing notice dated 02.11.2022 to the plaintiff. The defendant was ready to perform his part but the plaintiff was not ready to perform his part of agreement. Therefore, present application may be rejected.

8. Considering the nature of controversy, the following points arise for my determination and I have recorded my findings thereon with reasons as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether there is a prima facie case in favour of plaintiff ?	In the affirmative
2.	Whether there is balance of convenience in favour of plaintiff ?	In the affirmative
3.	Whether plaintiff would suffer irreparable loss, if interim relief is refused ?	In the affirmative
4.	What order ?	Application is allowed.

REASONS

AS TO POINT NO. 1 TO 3 :-

9. All points are interconnected to each other, therefore, they are required to be taken up together. In order to seek interim injunction, plaintiff must show that he has prima facie case and balance of convenience in his favour. In addition to this, plaintiff must further show what hardship would be caused to him if injunction is not granted.

10. At the outset, it is important to note here that it is admitted fact between the parties that agreement to sale was executed on 18.02.2021 and defendant had received an earnest amount of Rs.21 Lakh.

11. It is contention of plaintiff that defendant had refused to execute sale-deed. On the other hand, it is contention of defendant that plaintiff was not ready and willing to get execute sale-deed. While considering both these contentions, I must mention here that agreement to sale dated 18.02.2021 is an unregistered document. It is settled position of law that an unregistered document is an admissible piece of evidence in respect of suit for specific performance of contract. Therefore, one of the contention of defendant that agreement to sale was insufficiently stamped is not maintainable at this stage.

12. While perusing contents of agreement to sale, it is seen that sale-deed was to be executed on or before 18.10.2022 and plaintiff was to perform certain work, particularly, to incur expenditure being required for clearing title and government measurement. The contents

of the plaint show that plaintiff made an application to the Joint District Registrar and Collector of Stamps in respect of suit property for fixation of market value of suit property and for stamp duty 13.09.2022. Thus, it is seen that plaintiff had taken appropriate steps to proceed so as to get execute sale-deed of suit property after execution of agreement to sale. However, it is seen that the proceeding before the Joint District Registrar and Collector of Stamps had been prolonged on the part of the Joint District Registrar and Collector of Stamps for the purpose of deciding the application dated 13.09.2022 moved by the plaintiff. Thereafter, order has been passed on 14.11.2022 on the application, by the Joint District Registrar and Collector of Stamps. Thus, it is seen that, there is no deliberate delay on the part of plaintiff in performing his part of contract at this stage.

13. It is settled position of law that time is not essence of contract in respect of sale of immovable properties. However, if parties intend to make time as an essence of contract, it must be expressed in unequivocal language. In other words, agreement to sale should have a specific time clause and effects of non following time clause. In the instant case, there was no specific time clause in the agreement to sale. The instant agreement to sale only reflects that the remaining consideration amount was to be paid on or before 18.10.2022 at Sub-registrar Office, Parseoni. Moreover, whether the time was essence of agreement to sale or not, it will be question of trial.

14. It is pertinent to note here that plaintiff has sent original cheque of balance consideration dated 23.02.2023 to the defendant. This aspect shows that plaintiff had financial capacity to pay the

remaining consideration amount.

15. It is one of the contention of the defendant that the plaintiff is not the agriculturist therefore, he cannot purchase suit property. While considering this submission, I must mention here that whether plaintiff was agriculturist or not, it is question of trial and same cannot be decided at this stage.

16. Admittedly, plaintiff has protection under Section 52 of Transfer of Property Act. However, irreversible situation cannot be allowed to be created by transfer of suit property in favour of third party.

17. In view of foregoing discussion, in my opinion, the plaintiff was and is ready to perform his part of contract. Thus, the plaintiff has prima facie case and balance of convenience in his favour at this stage. Thus, if an interim relief is not granted to the plaintiff, he would suffer irreparable loss or injury at this stage and same cannot be compensated later in terms of money. Therefore, interest of plaintiff is required to be protected at this stage. Hence, I answer all the points in the affirmative.

AS TO POINT NO. 4 :-

18. In view of findings to point No. 1 to 3, the application is deserved to be allowed. Hence, I proceed to pass following order-

ORDER

1.	Application is allowed.
2.	The defendant is hereby restrained from alienating suit property (as described in para No.1 of the plaint or schedule) in any manner till the decision of suit.

3.	Cost in cause.
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Nagpur.
Dated : 06.12.2023.

(S. M. Sarode)
Civil Judge Senior Division,
Ramtek.

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S.C.S. No.185/2023
(Order below Exh. 5)

CERTIFICATE

I affirm that, the contents of this P.D.F file of order are word to word, as per original order.

Name of Stenographer : Sau. V. S. Boharapi, Stenographer (Grade II)