

Regular Civil Suit No.4/2017  
Namdeo/Atish

**ORDER BELOW EXH.5**

(Passed on 3<sup>rd</sup> day of May, 2017)

1. In order to restrain the defendant from alienating or from creating any third party interest in the agricultural field bearing survey no.216 admeasuring 1.00 HR, Class-I, situated at mouza Sawali, Tahsil-Parsoni, District-Nagpur (hereinafter referred to as "suit property" for the sake of brevity), the plaintiff has filed this interlocutory application under Order XXXIX Rules 1 & 2 of the C.P.C. for grant of temporary injunction.

2. The facts giving rise to the filing of this application are abridged as under:-

According to plaintiff, he was owner of suit property. On 05.05.2015 vide registered sale deed he has sold the suit property to defendant and also handed over its possession to him. Thereafter in the month of January, 2016 the defendant was in urgent need of money for the delivery of his wife, hence he offered the suit property for sale to plaintiff, to which plaintiff submitted his willingness and it was agreed that the plaintiff will purchase the suit property from defendant for total consideration of Rs.4,00,000/-. Accordingly, on 19.01.2016 the defendant has himself made an agreement to sale in respect of suit property. At the time of executing the agreement to sale, the defendant has requested the plaintiff to pay entire sale consideration to him because he is in urgent need of money. As per the request of defendant, the plaintiff has paid the entire

consideration of Rs.4,00,000/- to the defendant on 19.01.2016 in presence of witnesses and possession of suit property was handed over to plaintiff by defendant. The date of execution of sale deed was fixed as 05.12.2016. Further, at the time of handing over the possession of suit property to plaintiff, the defendant requested the plaintiff that he wants to cultivate and take care of the suit property till the execution of registered sale deed. The plaintiff accepted the request of defendant and given him the permission to cultivate the suit property till the execution of sale deed.

3. According to plaintiff, he waited till 05.12.2016 for the execution of sale deed of suit property by defendant. But looking to the negligent behaviour of defendant, on 06.12.2016 he visited the defendant and requested him to execute the sale deed, but the defendant has shown his arrogant behaviour and did not show his willingness to execute the sale deed. Hence, the plaintiff has issued legal notice to defendant on 10.12.2016 which was evasively replied by the defendant on 30.12.2016. So also, on 09.01.2017 when the plaintiff visited the suit property, the defendant has not allowed him to enter into the suit property and told that he will not return the possession back to the plaintiff. According to plaintiff, he is under apprehension that the defendant would alienate the suit property to third person which could cause irreparable loss to him and which cannot be compensated in terms of money. According to plaintiff, thus he has prima facie case in his favour, so also the balance of convenience lies in his favour. Hence, the plaintiff has filed this application for grant of temporary injunction against defendant and

prayed that the defendant be restrained from alienating or from creating any third party interest in the suit property till the disposal of this suit.

4. The defendant filed his reply to the instant application and denied all the adverse allegations of plaintiff as regards alleged agreement to sale the suit property entered into by defendant with plaintiff, handing over its possession to plaintiff and receipt of alleged entire consideration Rs.4,00,000/- from plaintiff. Lastly, he prayed for dismissal of application.

5. In the backdrop of the rival pleadings and the documents placed on record, I heard the learned advocates for both the sides.

6. Having perused the application and the relevant documents placed on record, following points arise for my determination and I have recorded my findings against the same for the reasons mentioned as under :-

<b>SN</b>	<b>Points</b>	<b>Findings</b>
1	Does the plaintiff prove that he has prima facie case in his favour ?	No
2	Does the plaintiff prove that balance of convenience lies in his favour ?	No
3	Does the plaintiff prove that he would suffer irreparable loss if temporary injunction is not granted in his favour ?	No
4	What order ?	Application is dismissed.

## **REASONS**

### **AS TO POINT NOS.1 TO 3:**

7. All the points being interlinked with each other, I proceed to discuss them together.

It is the case of plaintiff that he has interest in the suit property. He has entered into an agreement to purchase the suit property for consideration of Rs.4,00,000/- and an amount of Rs.4,00,000/- is already paid to the defendant. In order to boost his contention he has filed on record the copy of alleged agreement to sale, by which it is alleged that the defendant has agreed to sell the suit property back to plaintiff. But he has not filed any document on record to show that payment of Rs.4,00,000/- has been made to defendant. This fact is seriously fatal to the case of plaintiff. Further, perusal of alleged agreement to sale goes to show that one Tilakchand Sarile and Nistane have signed the agreement to sale in the capacity of witness. However, the plaintiff has not filed on record the affidavits of aforesaid Nistane and Sarile to probabilises his case. There is no nothing on record which could suggest that the plaintiff has right, title and interest in the suit property. In other words, the plaintiff has failed to prove that he has prima facie case and that balance of convenience lies in his favour.

8. It is also the case of plaintiff that if the defendant is not restrained from alienating or from creating any third party interest in the suit property, they he would suffer irreparable loss which cannot be compensated in terms of money. But when the plaintiff has failed

to prove that he has prima facie case and that balance of convenience lies in his favour, then in my opinion, there is no question of restraining defendant from alienating the suit property. Apart from this, it is admitted position on record that the defendant is in possession of the suit property and that he had purchased the suit property from plaintiff itself vide registered sale deed. Therefore, the claim of defendant as regards suit property appears more probable than the plaintiff. Thus the plaintiff has also failed to prove that he would suffer irreparable loss if injunction is not granted in his favour.

Hence, in view of the discussion noted above, I have come to the conclusion that the plaintiffs have failed to satisfy the triple test for getting the interim relief of temporary injunction i.e prima facie case, balance of convenience and suffering of irreparable loss. In such circumstances, I am of the considered view that the interlocutory application filed by the plaintiff deserves to be rejected. In the backdrop of the discussion noted above, I proceed to pass the following order-

#### ORDER

1. The application Exh.5 is hereby rejected.
2. Costs in cause.

Parseoni.  
Date:-03.05.2017.

(S.D.Wankhede)  
Civil Judge, Jr.Dn., Parseoni.

**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**-Abhijit Yeshwant Kulkarni