

Order below Exh.05

This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ('C.P.C.' In short).

Brief facts as mentioned in the application are as under :-

2. The property admeasuring 1H 20R out of block No.59/1 and 0H 37R out of block No.55/1 situated at Ujani, Tal.Sinnar is the subject matter of the suit as well as this application. This property has been specifically described in para 1A and 1B of the application. (Hereinafter these properties are referred to as the “***suit property***” for the purpose of brevity).

3. The plaintiff submit that, the suit property is ancestral property of the plaintiff and defendant Nos.1 to 5. After death of Dagadu Mhasu Sapnar, father of defendant Nos.1 to 5 namely, Rewba Dagdu Sapnar, deceased Madhav Dagadu Sapnar, father of the plaintiff deceased Trambak Dagadu Sapnar, deceased Bhagwat Sapnar, Mhasu Sapnar, Nivrutti Sapnar, Shravan Sapnar and deceased Houshabai Dagadu Sapnar were the legal representatives. Their names were mutated in the revenue record as per mutation entry No.768. There was partition between the legal representatives of Dagadu. The entry of the suit property has been recorded by way of mutation entry No.1201. Rewaji Sapnar is father of defendant Nos.1 to 5 and Trambak Sapnar is father of the

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plaintiff. Rewaji and Trambak were real brothers. The plaintiff and defendant Nos.1 to 5 are real cousins. Father of defendant Nos.1 to 5 namely, Rewaji left Ujani in 1985 in search of job. He was residing at Dahegaon, Tal.Chandwad. After death of Rewaji, names of defendant Nos.1 to 5 are mutated in revenue record as per mutation entry No.4060. Defendant Nos.1 to 5 are residing at Dahegaon, Tal.Chandwad. Share of defendant Nos.1 to 5 is in the possession of the plaintiff. Defendant Nos.1 to 5 could not cultivate their share. Therefore, they were intending to sell their share.

4. The plaintiff further submit that, the plaintiff has land in block No.59/1 and he was in possession of land of defendant Nos.1 to 5. Therefore, on 15.03.2024 there was agreement the plaintiff and defendant Nos.1 to 5 regarding sale of the suit property. Defendant Nos.1 to 5 and the plaintiff fixed the consideration of land in block No.59/1 as Rs.34,00,000/-. Defendant Nos.1 to 5 accepted Rs.11,000/- towards the earnest amount. In spite of accepting the earnest amount, defendant Nos.1 to 5, without informing the plaintiff, fraudulently executed sale deed in favour of defendant No.6 on 03.04.2024. The plaintiff came to know about this fact from third person. Therefore, he sent notice to defendant Nos.1 to 6 through advocate. In spite of receipt of notice, defendant Nos.1 to 5 sold the land to defendant No.6 by registered sale deed No.1939/2024 for consideration of Rs.36,93,000/-. The land of the plaintiff and defendant Nos.1 to 5 is adjacent to each other. The plaintiff managed the amount of

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Rs.34,00,000/- towards the part consideration as per agreement. He has preferential right to purchase land in block No.59/1. Therefore the plaintiff prayed that, defendant No.6 may be temporarily restrained from selling or otherwise disposing of the suit property to third person.

5. Defendant Nos.1 to 6 resisted the application by filing written statement at Exh.19 and denied most of the averments made in the application. It is contended that, defendant Nos.1 to 5 were owners of the suit property. The plaintiff has no concern with the property sold by them. They entered into an agreement of sale with defendant No.6 for consideration of Rs.36,93,000/-. Accordingly, agreement of sale deed dated 06.03.2024 was executed before notary, Sinnar. The defendants completed formalities of the sale deed on 06.03.2024 itself. However, due to technical problems, the transaction could not be completed. Defendant Nos.1 to 5 accepted the earnest amount of Rs.3,00,000/- from defendant No.6. Defendants agreed that, remaining amount of Rs.33,93,000/- was to be paid at the time of execution of sale deed. Accordingly, on 03.04.2024, sale deed was executed in favour of defendant No.6. The possession of the suit property was also handed over to defendant No.6 on the same date. On the strength of sale deed, name of defendant No.6 is mutated in the revenue record. The plaintiff raised objection to the mutation by filing RTS Case No.11/2024. However, in spite of his objection, the mutation entry was sanctioned. Defendant No.6 is cultivating the suit property in block No.59/1. The plaintiff has no preferential right to purchase the suit property.

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He has no prima facie case and balance of convenience in his favour. If the application is allowed, defendant No.6 will suffer irreparable loss. Therefore, defendant Nos.1 to 6 prayed for rejection of the application.

6. Learned advocate for the plaintiff has not advanced argument but has filed written notes of argument at Exh.25. Heard learned advocate for the defendants. Perused record of the case.

7. Points for determination along with my findings and reasons thereon are as under :-

<u>Points</u>	<u>Findings</u>
1. Does plaintiff prove that, he has prima facie case in his favour ?	...No.
2. Does plaintiff prove that, the balance of convenience tilts in his favour ?	...No.
3. Does plaintiff prove that, he will suffer irreparable loss if the application is not allowed ?	...No.
4. What order ?	...Application is rejected.

REASONS

8. In support of his claim, the plaintiff has placed on record various document at list Exh.3 and at list Exh.26. The defendants have filed the documents at list Exhs.12 and 22. The relevant documents are considered at the appropriate stage of discussion in this order.

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As to Point Nos.1 to 3 :-

9. I have discussed these points together, as these points are inter-linked with each other. Before touching to the other aspects of the case, it is necessary to mention here that, the present application is filed against defendant No.6 only. As per pleadings in the application, defendant No.6 is trying to sell out land in block No.59/1 which is part and parcel of the suit property.

10. It is argued on behalf of the plaintiff that, the plaintiff and defendants are cousins. Father of the defendant namely Rewaji Sapnar died prior to institution of the suit. Therefore, names of defendant Nos.1 to 5 is appearing in the 7/12 extract as per mutation entry No.4060. The document filed plaintiff at list Exh.3/2 pertains to the 7/12 extract of block No.55/1 for the year 2021-22 and 2023-24. These documents shows that, the name of plaintiff is appearing in the revenue record to the extent of 12R land in block No.55/1. The copy of 7/12 extract of Gat No.59/1 at Exh.3/2 shows that name of plaintiff is appearing to the extent of 0 H 43 R land and the names of defendant No. 1 to 5 is appearing to the extent of 1 H 20 R land in block No. 59/1. The copy of sale deed at list Exh.3/5 shows that, defendant Nos.1 to 5 sold 1H 20R land to defendant No.6. It clearly goes to show that, land in block No.59/1 has been transferred in the name of defendant No.6. Therefore, though there is a general mention in the application as well as in the plaint that, defendants are trying to sell out the suit property, he has filed application only against defendant No.6. Defendant No.6 purchased the land

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admeasuring 1H 20R out of block No.59/1. Therefore, the application is considered to that extent only.

11. It is case of the plaintiff that, he has preferential right to purchase the property in block No.59/1. To substantiate his case, he relied on the copy of mutation entry No.768 (list Exh.3/4), whereby names of legal representatives of Dagadu were mutated. The copy of mutation entry No.1201 at list Exh.3/3 shows that, legal representatives Dagadu Sapnar got partitioned the land between themselves. The copy of 7/12 extract of block No.59/1 at list Exh.3/1 shows that, name of plaintiff is appearing to the extent of 43R land. This 7/12 extract is pertaining to the year 2021-22 to 2023-24. Name of defendant Nos.1 to 5 is also appearing to the extent of 1H 20R land. Name of defendant No.6 is not appearing though sale deed has been executed in his name.

12. It is case of the plaintiffs that, defendant Nos.1 to 5 are not in possession of the suit property. He was cultivating the suit property i.e. land in block No.59/1 to the extent of 1H 20R. Defendant Nos.1 to 5 were not in position to cultivate their share. Therefore, they agreed to sell the suit property to the plaintiff on 15.03.2024. The consideration of Rs.34,00,000/- was fixed, out of which the plaintiff paid Rs.11,000/- to defendant Nos.1 to 5. Instead of accepting the earnest amount, defendant Nos.1 to 5 without informing the plaintiff fraudulently executed the sale deed in favour of defendant No.6. Being owner of the property in the same block number, the plaintiff was having preferential right to purchase the land

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from defendant Nos.1 to 5. It is further submitted by the plaintiff that, on 31.07.2024 defendant No.6 and other persons came to the suit property and ploughed the Soybean with the help of tractor. They caused loss of Rs.4,50,000/- approximately. Therefore, the plaintiff has filed report with MIDC Police Station. Police registered NC Case No.0524/2024 dated 31.07.2024. The plaintiff has relied on the copy of panchanama filed by him below list Exh.26 and the copy of NC report at list Exh.26/3. The panchanama dated 31.07.2024 is shown to be made in presence of 7 panchas including Talathi, Gramsevak and Agricultural Assistant, Ujani. It is mentioned in the panchanama that, on 31.07.2024 1H 20R land out of block No.59/1 was ploughed by unknown person and caused damage to Soybean. The NC report dated 31.07.2024 shows that, the plaintiff named four accused persons in the incident dated 31.07.2024.

13. The defendants have argued that, the plaintiff has no locus standi to claim the preferential right to purchase the suit property. They have relied on the document filed by them at list Exh.22. The copy of agreement of sale between defendant Nos.1 to 5 and defendant No.6 dated 06.03.2024 (list Exh.22/1) shows that, defendant Nos.1 to 5 entered into agreement of sale with defendant No.6 to sell the suit property for consideration of Rs.36,93,000/- by accepting the consideration of Rs.3,00,000/-. It is a matter of record that, on the basis of this agreement of sale, sale deed came to be registered on 03.04.2024. The copy of sale deed shows that, the stamp duty and registration fees was paid on 06.03.2024

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itself. It seems that, the plaintiff challenged the copy of mutation entry No.6368. The document at list Exh.22/2 is the order passed by the Nayab Tahsildar dated 08.07.2024. By this order objection raised by the plaintiff was rejected.

14. It is vehemently argued on behalf of the defendants that, the plaintiff has sold his entire share in block No.59/1 to third person. Therefore, he has no right to claim preemption in respect of the suit property. In support of his argument, learned advocate for the defendants relied on the sale deed No.5694/2023 filed below list Exh.22/3. This document shows that, the plaintiff and three other persons have sold their entire share in block No.59/1 to one Ratan Ramesh Shinde by registered sale deed on 18.12.2023. The said sale deed was executed pursuant to the agreement of sale. It clearly goes to show that, the plaintiff has alienated his entire share in block No.59/1. Therefore, the entry of the name of the plaintiff in 7/12 extract is merely a paper entry. It is also necessary to mention here that, while claiming equitable relief, the plaintiff has suppressed the fact of execution of sale deed in respect of his share in block No.59/1.

15. The defendants have also argued that, the plaintiff tried to manipulate the document by preparing panchanama on 31.07.2024. In support of their argument, they relied on the document at list Exh.22/5. It is an application filed by defendant No.6 with the BDO, Sinnar in respect of preparation of false panchanama. The statement of Gramsevika – Vaishali Sanjay Puri is at list Exh.22/6. It shows that, the plaintiff

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furnished false information to them regarding ploughing of Soybean in block No.59/1. Further she stated that on the next day, defendant No.6 appeared in the Grampanchayat and shown 7/12 extract. It is also mentioned in the statement that, on inquiry Gramsevika, Ujani came to know that, defendant No.6 sown Soybean in the land purchased by him. He himself ploughed his land. Therefore, the plaintiff furnished false information to the revenue authorities. The Taluka Agricultural Officer, Sinnar also informed this fact to defendant No.6. The letter of Taluka Agricultural Officer, dated 27.08.2024 is at list Exh.22/6.

16. In order to claim the equitable relief of temporary injunction, the plaintiff must approach the court with clean hands. The plaintiff has suppressed the material fact of execution of sale deed in respect of his entire share in block No.59/1. He has merely stated that, his land in block No.55/1 is adjacent to block No.59/1. However, no documentary proof has been placed on record by the plaintiff to substantiate this fact. The plaintiff has also not placed on record any document to show that, on 15.03.2024, defendant Nos.1 to 5 agreed to sell suit property to him by accepting Rs.11,000/- out of total consideration of Rs.34,00,000/-. Even otherwise, the agreement of sale between defendant Nos.1 to 5 and defendant No.6 was executed on 06.03.2024. The plaintiff has not shown any document to substantiate his case of oral agreement of sale. The plaintiff has failed to show that, he was holding land in block No.59/1, in order to claim the preferential right to purchase the suit property. Therefore,

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prima facie case and balance of convenience do not lie in favour of the plaintiff. The plaintiff will not suffer irreparable loss if the application is not allowed. Defendant No.6 has purchased the suit property for valuable consideration. If he is restrained from alienating or otherwise dealing with the suit property, he will suffer more hardship. Therefore, in the light of above discussion, I have answered points No.1 to 3 in the negative.

As to point No. 4 :-

17. The plaintiff has not established three necessary ingredients for the grant of temporary injunction. Therefore, the application deserves to be rejected. Hence, in view of negative findings to point Nos. 1 to 3 and in answer to point No. 4, I pass following order,

ORDER

1. The application is rejected.
2. Costs in cause.

Date : 02.04.2025.

Sd/-xxx
(R. S. Kanade)
Civil Judge, S.D., Sinnar.