

**COMMON ORDER BELOW APPLICATIONS (EXH. 5 AND 43) IN
SPECIAL CIVIL SUIT NO. 14 OF 2025.**

1) This is an application filed by the plaintiff under Order 39 Rule 1 of the Code of Civil Procedure, 1908. So also, defendant Nos. 1 to 7 have filed their written statement and say (Exh.66) to the application. Defendants Nos.8 and 9 filed Pursis (Exh.64) and adopted Written Statement and Say (Exh.66) of defendants Nos.1 to 6. Defendant No.10 filed its Written Statement and Say (Exh.75).

2) It is the case of the plaintiff that, the suit property Gat No. 311 area 2 H 99 R situated at village Pimpalgaon Ghadga, Tal. Igatpuri, Dist. Nashik (hereinafter referred to as 'the suit property' for the sake of brevity). The suit property is owned and possessed by defendants Nos.1 to 5. On 14/03/2008, defendants Nos.1 to 5 as they were unable to cultivate the suit property, executed Registered Agreement to Sale in favour of the plaintiff by following all legal requirements like publishing legal notice in newspaper 'Daily Deshdoot', etc. Some of the important terms and conditions of said Agreement to Sale are as follows :-

- a) Total agreed consideration amount is Rs.5,98,000/- and out of which amount of Rs.2,91,000/- was already paid by the plaintiff and remaining amount of Rs.3,07,000/- was agreed to pay at the time of sale-deed. (However, the said remaining amount was also subsequently paid by the plaintiff to defendants Nos.1 to 5).
- b) It was agreed that, possession of the suit property would be given to the plaintiff at the time of Sale-deed.
- c) Defendants Nos.1 to 5 should obtain permission to sale the suit property from the Collector as the suit property is Restricted Tenure Land and some other necessary permissions and the expenses of the same should be borne by the plaintiff.

- d) Defendants Nos.1 to 5 agreed to take off name of Murlidhar Punja Mahar from 7/12 extract of the suit property as he was not at all concerned with it.
- e) Defendants Nos.1 to 5 should get measure the suit property before the Sale-deed.
- f) No fixed date for the Sale-deed was decided by the parties.
- g) Defendants Nos.1 to 5 have also agreed that, the possession of the suit property is entirely with them. The suit property is unencumbered and they had not entered into any oral or documentary contract to alienate the suit property to anyone before the execution of the said Agreement to Sale. No dispute is pending in respect of the suit property before any forum. The suit property is not acquired by the Government for any purpose. The suit property is neither mortgaged nor any charge is appearing on the same. Title of the suit property is clear and without any encumbrance. The suit property is neither owned by any Schedule Tribe Member nor it is of any Vatan or Iman Property.

3) As per the terms and conditions of Agreement to Sale, the plaintiff was always ready and willing to execute the sale-deed. Though it was agreed that, the remaining consideration amount should be paid at the time of execution of sale-deed, the plaintiff paid entire consideration amount from time to time as per the demand of defendants Nos.1 to 5 for their needs. Accordingly, defendants Nos.1 to 5 executed 'Rujwat Letter' (Letter of Acknowledgment) on 17/04/2017 mentioning the amount subsequently paid to defendants Nos.1 to 5. Even thereafter, in spite of repeated insistence by the plaintiff to defendants Nos.1 to 5 to comply their part of contract, they failed to do so. Again on 12/03/2019, on the insistence of the plaintiff defendants Nos.1 to 5 executed 'Supplementary Contract' in his favour and gave reassurance to comply their part of

contract. Still they refused to execute the sale-deed of the suit property in favour of the plaintiff.

4) Further it is alleged by the plaintiff that, to his surprise afterwards he came to know that, defendants Nos.1 to 5 have executed Registered Agreement to Sale on 17/01/2019 in favour of defendants Nos. 6 and 7. Defendants Nos.6 and 7 were completely aware of the existing Registered Agreement to Sale of the plaintiff and therefore they are not bonafide purchaser. Neither they have paid any consideration amount nor defendants Nos.1 to 5 had put them in the possession of the suit property. The said Agreement to Sale is basically null and void and illegal. Therefore, the plaintiff was constrained to file the present suit.

5) Further, during the pendency of the suit on 14/09/2024 defendants Nos.6 and 7 issued Public Notice in respect of the Sale of the suit property in 'Daily Deshdoot' through Advocate Bhor. From this notice, the plaintiff came to know that, defendants Nos.6 and 7 have decided to Sale the suit property. The plaintiff immediately on 30/09/2024 sent legal notice through Advocate Bhutada and took the objection. At that instance, for the first time, the plaintiff came to know that, defendants Nos.1 to 5 have executed the Registered Sale-deed of the suit property in favour of defendants Nos. 6 and 7 as per Document No.417/2024 on 25/01/2024.

6) The plaintiff added defendants Nos.6 and 7 as party to the suit and also prayed for declaration that, the Agreement to Sale as well as the Registered Sale-deed executed by defendants Nos.1 to 5 in favour of defendants Nos.6 and 7 of the suit property are illegal and not binding on

the plaintiff. In spite of all this mess, again to the surprise of the plaintiff, defendants Nos.6 and 7 executed Registered Sale-deed of area 1 H 49.50 R out of Gat No.311 in favour of defendant No.8 on 22/10/2024 as per Document No.4443/2024. The plaintiff had taken objection in Revenue Office in respect of Mutation Entry of the said transaction. Defendant No.10 – Shrimant Thorle Bajirao Peshve Co-operative Patsanstha had disbursed the loan amount of Rs.37,00,000/- to defendant No.8 with the consent of defendants Nos.6, 7 and 9. Defendant No.10 is also trying to make the entry of its name to the Revenue Record of the suit property. Therefore, the plaintiff has amended his plaint accordingly.

7) Further it is alleged by the plaintiff that, he has prima-facie case and irreparable loss would be caused to him if injunction against defendants Nos.1 to 10 is not granted to the effect that they should not alienate the suit property in any manner or create any third party interest or charge on the same. So also he submitted that, considering all facts and circumstances of this case, balance of convenience lies in his favour. Therefore, he prayed to allow this application and prayed for temporary injunction against defendant Nos.1 to 10 restraining them from alienating the suit property in any manner or create any third party interest or charge on the same.

8) Defendant Nos.1 to 7 filed their Written Statement and Say (Exh.66) and denied all allegations of the plaintiff in his application and resisted the same. It is contended by defendants Nos.1 to 7 that, the averments, prayers and claims of the plaintiff in the suit are illegal and liable to be canceled. The plaintiff has concealed material facts from the court and the suit is not in limitation as the limitation to file the suit on the

basis of alleged Agreement to Sale was over on 14/03/2011. Defendants Nos.6 and 7 have legally purchased the suit property by paying full consideration amount, as per Registered Sale-deed No.417/2024 on 25/01/2024 in compliance of Registered Agreement to Sale No.155/2019 executed on 17/01/2019 and took the possession of the same. The plaintiff was never interested in execution of Sale-deed for the compliance of his Agreement to Sale dtd.14/03/2008. The plaintiff was bound to seek the permission from the Collector, Nashik regarding 'Bhogwata Varga 2' for purchase of the suit property, but he failed to do so and lost his right of Specific Performance of the Agreement to Sale dtd.14/03/2008 and accordingly the said Agreement to Sale was canceled automatically.

9) Further they have contended that, defendants Nos.6 and 7 have rightly and legally sold the suit property to defendant No.8 by Registered Sale-deed Document No.4443/2024 on 22/10/2024. Before entering into the Sale-deed transaction, defendants Nos.6 and 7 issued Public Notice for cancellation of every contract regarding the suit property, to which the plaintiff replied through his lawyer on 28/11/2024. The present suit is filed by the plaintiff without any reason and this is false suit.

10) Under such circumstances, they contended that the plaintiff has no prima-facie case. Neither balance of convenience lies in his favour nor he has succeeded to show that he would suffer irreparable loss if the injunction in his favour is not granted. On the contrary, if the injunction is granted in the favour of the plaintiff, defendant Nos.1 to 7 would suffer huge loss as they would not be able to access their own property. In such circumstances, they prayed for rejection of the application.

11) As mentioned above, defendants Nos.8 and 9 accepted Written Statement and Say (Exh.66) of defendants Nos.1 to 7. Further it is contended by defendant No.10 i.e. Manager of Shrimant Bajirao Peshve Nagri Patsanstha that, all the transactions amongst defendants Nos.1 to 9 are completely legal. The plaintiff has no right to claim anything by filing this suit. Defendant No.10 Patsanstha has legally and by looking into all necessary documents and on legal demand of defendant No.9 on filing of his loan application, disbursed the loan amount of Rs.37,00,000/- and got Registered Mortgage of the suit property as per Document No.4445/2024 on 22/10/2024 and accordingly Mutation Entry No.1500 was executed. Only to harass all defendants, the plaintiff has filed the present suit.

12) Heard rival parties at length. Perused Applications (Exh.5 and 43), Say (Exh.64, 66 and 75) and documents filed by the plaintiff as well as defendants.

13) Following points arises for the consideration and my findings on them are as follows for the reasons stated below :-

<u>POINTS</u>	<u>FINDINGS</u>
(1) Whether the plaintiff proves <i>prima-facie</i> case to show his entitlement to relief of temporary injunction during pendency of the suit?	Yes
(2) Whether the plaintiff proves that balance of convenience lies in his favour ?	Yes
(3) Whether the plaintiff proves that he would suffer an irreparable loss which cannot be compensated in	

terms of money if the relief of temporary injunction is not granted in his favour ?

Yes

(4) What order ?

As per final order.

REASONS

AS TO POINTS NOS. 1 TO 3 :-

14) Perused documents filed by the plaintiff below list (Exh.3) specifically 7/12 extract of suit property, Photo copy of Registered Agreement to Sale dtd.04/03/2008 executed in favour of the plaintiff by defendants Nos.1 to 5, Photo copy of Registered Agreement to Sale dtd.17/01/2019 executed in favour of defendants Nos.6 & 7 by defendants Nos.1 to 5, Photo copy of Public Notice in daily newspaper dtd.14/02/2008 issued by the plaintiff before entering into Registered Agreement to Sale dtd.04/03/2008 for calling objection regarding the suit property, Photo copy of Notice dtd.16/04/2019 issued by defendants Nos.1 to 5 calling upon the plaintiff and informing him that, the Agreement to Sale dtd.04/03/2008 stands canceled, Photo copy of notice reply dtd.09/05/2019 by the plaintiff to defendants Nos.1 to 5 to the notice dtd.16/04/2019, Notarized Supplementary Agreement dtd.12/03/2019 executed by defendants Nos.1 to 5 in favour of the plaintiff admitting their responsibility for execution of the Sale-deed in compliance of Agreement to Sale dtd.04/03/2008 and also admitting that they have received entire consideration amount up-till then, Photo copy of 'Rujwat Letter' (Letter of Acknowledgment) dtd. 17/04/2017 executed by defendants Nos.1 to 5 in favour of the plaintiff acknowledging that the entire consideration amount has been received by them. Perused photo copy of Sale-deed dtd.12/01/2024 executed by defendants Nos.1 to 5 in favour of defendants Nos.6 and 7 filed along with list (Exh.37). I have also perused documents

filed along with list (Exh.42) by the plaintiff i. e. two certified copies of Sale-deeds vide Documents Nos.4433 and 4444 dtd.22/10/2024 executed by defendants Nos.6 and 7 respectively to defendants Nos.8 and 9, certified copy of Registered Mortgage-deed executed by defendant No.9 in favour of defendant No.10 Patsanstha of the suit property, three notices issued by Circle Officer dtd.08/01/2025.

15) In view of case of the plaintiff and defence of the defendants mentioned in foregoing paras and documents on record, it is clear that on 04/03/2008 defendants Nos.1 to 5 have executed Registered Agreement to Sale in favour of the plaintiff and the plaintiff had also taken precautions before entering into the said agreement by issuing public notice dtd.04/03/2008 calling upon objection for execution of the said Agreement to Sale. According to Agreement to Sale dtd.04/03/2008, defendants Nos.1 to 5 were bound to comply necessary conditions mentioned above and then they were bound to execute the Sale-deed of the suit property in favour of the plaintiff. Further, it can be seen that, defendants Nos.1 to 5 have executed 'Rujwat letter' (Letter of acknowledgment) dtd.17/04/2017 in favour of the plaintiff admitting that they have received entire consideration amount as per Agreement to Sale dtd.04/03/2008. Even from Supplementary Agreement dtd.12/03/2019, it is clear that, defendants Nos.1 to 5 admitted their responsibility for execution of Sale-deed of the suit property in compliance of Agreement to Sale dtd.04/03/2008 and also admitted receipt of entire consideration amount. Looking into these series of transactions, it is clear that the Agreement to Sale dtd.04/03/2008 was not at all canceled by defendants Nos.1 to 5 till 12/03/2019 for any reason whatsoever. However, on 16/04/2019 defendants Nos.1 to 5 issued notice calling upon the plaintiff and

informing him that, Agreement to Sale dtd.04/03/2008 stands canceled to which the plaintiff by issuing notice reply on 09/05/2019. In such circumstances and looking into terms and conditions of Agreement to Sale dtd.04/03/2008, it is clear that for execution of Sale-deed of the suit property, time was not essence of contract. Rather cause of action arose to file the suit for Specific Performance of Contract due to notice dtd.16/04/2019 for cancellation of Agreement to Sale. So, prima-facie in my opinion the suit is well within limitation. Further, it seems that defendants Nos.1 to 5 have executed Agreement to Sale of the suit property in favour of defendants Nos.6 and 7 on 17/01/2019 i. e. even before execution of Notarized Supplementary Agreement dtd.12/03/2019 and also notice of cancellation dtd.16/04/2019. It means that, even before cancellation of Agreement to Sale dtd.04/03/2008 defendants Nos.1 to 5 entered into Registered Agreement to Sale of the suit property in favour of defendants Nos.6 and 7. Thereafter, the plaintiff was constrained to file the present suit on 28/07/2020. Even during the pendency of the suit, defendants Nos.1 to 5 executed Sale-deed of the suit property in favour of defendants Nos.6 and 7 on 12/01/2024. Then, defendants Nos.6 and 7 executed Sale-deed of the suit property in favour of defendants Nos.8 and 9 on 22/10/2024 and defendant No.9 mortgaged the suit property to defendant No.10 Patsansta on 08/01/2025. These series of transactions took place during the pendency of the suit. Prima-facie it is clear that, the suit of the plaintiff is well within limitation as discussed above.

16) Considering these series of transactions, the plaintiff is here with the temporary injunction applications (Exh.5 and 43) and seeking injunction to restrain defendants from entering into any transactions including every transfer not limited to sale, any other transfer or alienation

or encumbrance of the suit property during the pendency of the suit. In the case in hand, in my opinion, it is necessary to restrain the defendants from entering into any further transactions regarding the suit property, to prevent complications, protect the suit property and to avoid the multiplicity of the proceedings that may arise if defendants are allowed to act unilaterally or prejudicially to the rights of the plaintiff.

17) Therefore, in view of discussion in foregoing paras, the plaintiff has seriously disputed question in the suit which encourage the probability of entitlement to the relief for the plaintiff. There is high chance of an irreparable loss to the plaintiff with regard to his legal right before it is established in the suit in trial. Ultimately, as of result, comparative mischief or inconvenience is likely to cause to the plaintiff in given circumstances. So, the plaintiff has succeeded to prove prima-facie case in his favor and demonstrated that he will suffer irreparable injury or harm if the injunction is not granted. Therefore, it is more just and convenient to grant the injunction. Moreover, at this juncture, the plaintiff has no other adequate remedy available and monetary damages at this stage cannot adequately compensate the plaintiff.

18) So, in my opinion, the plaintiff has succeeded to prove his *prima-facie* case to show his entitlement to the relief of temporary injunction during the pendency of the suit. The balance of convenience lies in his favour and he would suffer an irreparable loss which cannot be compensated in terms of money if the relief of temporary injunction is not granted in his favour. Hence, I answer my findings on Point Nos. 1 to 3 in the affirmative and in reply to Point No. 4, I pass the following order.

ORDER

- (1) The Applications (Exh.5 and 43) are allowed.
- (2) The defendants are temporarily restrained from alienating / transferring the suit property in any manner or creating any third party interest or creating any charge on the suit property till the final disposal of this case.
- (3) Costs in consequences of the suit.

Date : 07/05/2025.

(Yashshree Marulkar)
Civil Judge Senior Division,
Igatpuri.