

Imran Najir Patel
v/s.
Santosh Shivaji Dalvi & Ors.

ORDER BELOW APPLICATION (EXH. 5)
IN SPECIAL CIVIL SUIT NO. 15 OF 2025.

1) This is an application filed by the plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC'). So also, defendants Nos. 1 and 2 have filed their written statement and say (Exhs. 38 & 36 respectively) to the application.

2) It is the case of the plaintiff that, the suit property Gut No. 822 area 0H 74R out of which southern side area 0H 40R situated at village Gonde Dumala, Tal. Igatpuri, Dist. Nashik (hereinafter referred to as 'the suit property' for the sake of brevity). The plaintiff and defendant no. 1 had initial negotiations regarding the sale of the suit property on 20.12.2020, during which the plaintiff paid an advance amount of Rs. 20,000/- to defendant no. 1 in cash. Subsequently, the plaintiff and defendant no. 1 executed a registered agreement to sale on 20.12.2021, bearing registration No. 4485/2021, in respect of the suit property. The total consideration agreed upon for the said property was Rs. 30,00,000/-. As part of the agreement, the plaintiff paid a sum of Rs. 25,00,000/- towards earnest amount via RTGS, and it was mutually agreed that the balance amount of Rs. 5,00,000/- would be paid at the time of execution of the sale-deed. One of the essential terms of the agreement was that possession of the suit property would be handed over to the plaintiff at the time of execution of the sale-deed and it was further agreed that defendant

no. 1 would get the property measured and boundaries fixed before executing the final sale-deed. Despite repeated requests and reminders by the plaintiff, defendant no. 1 failed to get the property measured or boundaries fixed. The plaintiff continued to insist upon compliance with the terms of the agreement, but defendant no. 1 kept avoiding his obligations.

3) Further he has contended that, on 11.12.2023, defendant no. 1 again executed an Assurance Deed in favour of the plaintiff, reaffirming his intention to execute the sale-deed in respect of the suit property. However, upon verification of the online 7/12 extract of the suit property, the plaintiff discovered that the name of defendant no. 2 had been mutated as the owner of the entire Gut No. 822, including the suit property. The plaintiff further came to know that defendant no. 1 had executed a Registered Sale-deed dated 23.10.2023 in favour of defendant no. 2, bearing registration No. 4195/2023, and on the basis of the same, mutation entry No. 4866 had been recorded in the revenue record. The suit property admeasuring 40R is a part of Gut No. 822. Defendant no. 1 had already entered into a valid and subsisting agreement with the plaintiff in respect of the said 40R land and accepted Rs. 25,00,000/- from the plaintiff, yet in violation of the terms, he fraudulently sold the entire Gut No. 822 to defendant no. 2, including the suit property. Defendant no. 2, who is now recorded as owner of the entire Gut No. 822, may create third-party rights, alienate, sell, or otherwise dispose of the suit property to third parties, thereby causing irreparable loss and injury to the plaintiff. If defendants are not restrained by an order

of temporary injunction, the plaintiff will suffer irreparable loss, and the entire purpose of the agreement to sale would be defeated. The balance of convenience also lies in favour of the plaintiff. The cause of action still continuing. Therefore, he prayed to allow this application and prayed for temporary injunction against defendants restraining them from alienating the suit property in any manner or create any third party interest or charge on the same.

4) Defendant No.2 filed his Written Statement and Say (Exh.36) and denied all allegations of the plaintiff in his application and resisted the same. It is contended by defendant No.2 that, he is the lawful owner and bonafide purchaser of the entire Gut No. 822, admeasuring 74R, having every legal right, title and interest to deal with and alienate the said property. Further he has contended that, in the month of January 2021, he alongwith defendant no. 1 mutually decided to enter into a transaction for the sale of the entire Gut No. 822, admeasuring 74R area, for a total consideration of Rs. 70,00,000/-. Defendant no. 2 paid the entire sale consideration of Rs. 70,00,000/- to defendant no. 1 through bank transaction/RTGS, and thereafter, registered sale-deed bearing registration No. 4195/2023, was executed by defendant no. 1 in favour of defendant no. 2 in respect of entire Gut No. 822. The same is duly recorded in the revenue record. Further he has contended that, he is bonafied purchaser for value without notice and had no knowledge of any alleged prior transaction or agreement between the plaintiff and defendant no. 1. At the time of execution of the registered sale-deed, there was no encumbrance or lis pending on the suit property. Further he has contended that,

defendant no. 1 has never executed any valid or enforceable agreement to sale in favour of the plaintiff in respect of the suit property, as alleged. The said agreement, even if purportedly executed, was not acted upon and has no legal sanctity. Further he has contended that, defendant no. 1 had merely obtained a hand loan from the plaintiff, and in order to secure the said hand loan amount, an agreement to sale was executed between them as a form of security. Subsequently, defendant no. 1 repaid the entire loan amount to the plaintiff, and all such transactions were carried out through proper banking channels. Further he has contended that, at the time of sale, defendant no. 1 showed him all the relevant bank statements and proof of repayment, thereby clarifying that no claim or encumbrances existed upon the said property, and that he had clear and marketable title over the entire Gut No. 822. Therefore, the sale-deed executed by defendant no. 1 in his favour is legal, valid and binding. Defendant no. 2 is now the absolute owner and in possession of the entire Gut No. 822, including the suit property.

5) Further he has contended that, the plaintiff with malafide intention and ulterior motives, has filed the present application solely to harass defendant no. 2 and prevent him from exercising his lawful rights over the suit property. The plaintiff has not approached before the Court with clean hands. Further he has contended that, if the injunction is granted, it will cause grave hardship and irreparable loss to defendant no. 2, who is a lawful and bonafied purchaser. On the other hand, no irreparable loss will be caused to the plaintiff, who has no right, title or interest in the

suit property. In such circumstances, he prayed for rejection of the application.

6) Defendant No.1 filed his Written Statement and Say (Exh.38) and denied all allegations of the plaintiff in his application and resisted the same. It is contended by the defendant No.1 that, he accepted written statement and say (Exh. 36) of defendant no. 2. He further contended that due to financial crises in Covid-19 Pandemic, he obtained hand loan amount of Rs. 25,00,000/- from the plaintiff, and in order to secure the said hand loan amount, an agreement to sale was executed between them as a form of security. Subsequently, he repaid the entire hand loan amount to the plaintiff from time to time through RTGS and by cash, and all such transactions were carried out through proper banking channels. He further contended that, on 11.12.2023, the plaintiff forcibly executed an Assurance Deed in his favour from him. He further contended that only to harass defendants, the plaintiff has filed the present suit. In such circumstances, he prayed for rejection of the application.

7) Heard rival parties at length. Perused Application (Exh.5), Say (Exh.36 and 38) and documents filed by the plaintiff as well as defendants.

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

POINTS**FINDINGS**

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| (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 :-**

9) Perused documents filed by the plaintiff below list (Exh. 3) specifically photo copy of Registered Agreement to Sale dated 28/12/2021 executed in favour of the plaintiff by defendant No.1, photo copy of Assurance Deed dated 11.12.2023 executed by defendant No.1 in favour of the plaintiff, photo copy of Registered Sale-deed executed by defendant No.1 in favour of defendant No.2 dated 23.10.2023, 7/12 extract of the suit property and also filed extract of bank statement of account of A.U. Small Finance Bank Ltd. of the plaintiff. Defendant no. 1 filed extract of bank statement of account of Bank of Maharashtra of defendant no. 1.

10) In view of case of the plaintiff and defence of the defendants mentioned in foregoing paras and documents on record, prima-facie it is clear that on 28.12.2021, defendant No.1 has executed Registered Agreement to Sale of the suit property in favour of the plaintiff. According to Agreement to Sale dated 28.12.2021, defendant No.1 was bound to comply necessary terms and conditions and then he was bound to execute the Sale-deed of the suit property in favour of the plaintiff. Further, it can be seen that, defendants No.1 has executed 'Assurance Deed' dated 11.12.2023 in favour of the plaintiff admitting that he has received entire consideration amount as per Agreement to Sale dated 28.12.2021 and also agreed to get measured the suit property from TILR and fix the boundaries, erect the compound and prepare the road for access. However, it can be also see that even before execution of Assurance Deed dated 11.12.2023, defendant no. 1 executed registered sale-deed on 23.11.2023 in favour of defendant no. 2.

11) Further, the defendant No. 1 relied on following case law :

Nitin Marutrao Kale and Ors. Vs. Manikrao Bajirao

Malgunde and Ors., 2025 (2) MhLJ 375, it has been held that :-

Readiness and willingness to perform contractual obligations in timely manner and belated filing of suit after the execution of sale-deeds by original owners in favour of third parties can result in refusal of interim relief for specific performance.

12) It is a defence of defendants that defendant no. 1 had taken hand loan from the plaintiff and he has repaid the same.

However, agreement sale-deed dated 28.12.2021 was nothing but the security for the said hand loan transaction. Surprisingly, defendants have failed to file any documentary evidence to support their contentions. There is not a single whisper about any such hand loan either in agreement to sale dated 28.12.2021 or in Assurance Deed dated 11.12.2023. On the contrary, though extract of bank statement of defendant no. 1 showing some advancement of the payment in favour of the plaintiff, but at the same time extract bank statement of the plaintiff shows that he has paid Rs 25,00,000/- twice to defendant no. 1 i.e. on 21.12.2021 and 22.12.2021. So prima-facie it can be said that there may be a hand loan transaction of Rs. 25,00,000/- between the plaintiff and defendant no. 1 as alleged by defendant no. 1. However, both these transactions i.e. agreement to sale dated 28.12.2021 and alleged mortgaged transactions seem to be different. As discussed above, defendants have prima-facie failed to file any documentary evidence to support their defence of hand loan for security of said hand loan agreement to sale dated 28.12.2021.

13) Considering these series of transactions, the plaintiff is here with the temporary injunction application (Exh.5) 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 and in given set of facts of both the parties, 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.

14) 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. Careful perusal of case of Nitin Kale (cited supra) the situation is completely different than the case in hand. Hence, in my humble opinion, it is not apt to the present case.

15) 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 Application (Exh.5) is allowed.
- (2) 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 : 04.07.2025.

(Yashshree Marulkar)
Civil Judge Senior Division,
Igatpuri