

1.

**Special Civil Suit No. 364/2023**

Sushilabai Arjun Khatale

Vs.

Vasant Raghoji Gawle,

MHNS290021272023



**ORDER BELOW APPLICATION (EXH. 05)**

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, defendant nos. 1 to 3 have filed their Written Statement and Say at Exh. 75, defendants nos. 4 and 5 have filed their Written Statement and Say Exh. 43, defendant nos. 6 and 7 have filed their Written Statement and Say Exh. 64 to the application.

2) It is the case of the plaintiff that, she has purchased and is in independent possession of a portion of agricultural land from Gat No. 797, Mouje Adwan. The adjacent land admeasuring 00 H 21 R was owned by defendant no. 1 and he and his wife intended to sell the same to the plaintiff and accordingly, there was meeting between them. During that meeting defendant no. 1 shown the registered sale deed of the suit property and told her that the suit property was purchased by him from defendants nos. 4 and 5 in the year 2016, however, due to some difficulty his name could not be entered to the revenue record of the suit property. After discussion, defendant no. 1 agreed to sell the suit property to the plaintiff. She further stated that, defendant no. 1 and his wife (defendant no. 2) executed a Notarised Agreement to Sell dated 03.09.2021, whereby

defendant no. 1 agreed to sell the suit property to the plaintiff for consideration of Rs. 4,11,000/-, out of which Rs. 2,00,000/- was already paid by the plaintiff through two cheques. Defendant no. 1 accepted the amount and acknowledged the transaction.

3) As per the terms and conditions of the agreement to sell, defendant no. 1 was to first get his name recorded on the 7/12 extract and thereafter execute a registered sale deed in favour of the plaintiff within two months. The plaintiff alleged that despite repeated requests, defendant no. 1 avoided execution of the sale deed. The plaintiff submits that she was always ready and willing to pay the balance consideration of Rs. 2,11,000/-, which amount she has kept ready. The plaintiff further alleged that defendant no. 1, in collusion with defendants no. 2 to 7, clandestinely executed a subsequent sale deed dated 22.08.2023 in favour of defendants nos. 6 and 7, by falsely showing defendants no. 4 and 5 as transferors, despite the fact that defendants no. 4 and 5 had already sold the property to defendant no. 1 in the year 2016. According to the plaintiff, this subsequent sale deed is fraudulent, illegal, without authority, and not binding on her rights.

4) On coming to know of the said transaction, the plaintiff immediately filed objections before the revenue authorities on 05.09.2023, and subsequently lodged a criminal complaint before Igatpuri Police on 09.10.2023.

5) The plaintiff submits that defendants no. 6 and 7 are not bonafide purchasers, being permanent residents of the same village and having full knowledge of the plaintiff's earlier

agreement. The plaintiff alleges collusion amongst all defendants.

6) The plaintiff further states that the defendants are now attempting to further alienate or create third-party rights in the suit property on the basis of the alleged fraudulent sale deed dated 22.08.2023, which would cause irreparable loss to her rights under the earlier agreement.

7) The suit is filed for specific performance of the agreement dated 03.09.2021, cancellation of the subsequent sale deed dated 22.08.2023, declaration of its non-binding nature, and consequential injunctions. She prayed that temporary injunction restraining defendants no. 6 and 7 from alienating the suit property, creating any third-party interest, or changing the nature of the property, pending disposal of the suit.

8) The plaintiff asserts existence of a prior concluded contract supported by payment of part consideration; readiness and willingness; and an allegedly fraudulent subsequent sale deed executed by persons having no authority. If defendants alienate the property further, the suit may become infructuous and the plaintiff's contractual rights will be defeated. Creation of third-party rights would lead to multiplicity of litigation and irreversible complications, which cannot be adequately compensated by money. Hence, she prayed for allow the application against defendant nos. 6 and 7.

9) The plaintiff has sought an injunction against Defendant Nos. 6 and 7; however, in order to appreciate the

plaintiff's case in its entirety, it is necessary to consider the pleadings and prayers in the written statements and say filed by all the defendants. I am therefore summarising, in brief, the facts and the defence taken by each of the defendants in their respective written statements, including their say to the application for temporary injunction.

10) The defendant nos. 1 to 3 have filed their Written Statement and Say at Exh. 75 to the application and deny the entire plaint averments except those expressly admitted. The defendants deny the plaintiff's version relating to any Agreement to Sell dated 03.09.2021 in respect of the suit property, payment of consideration, readiness-and-willingness, or any binding terms. They deny all allegations of fraud, collusion, misconduct, and the existence of any enforceable contractual obligations.

11) Defendants state that the plaintiff was informed that defendant no. 1's name was not mutated on 7/12; the plaintiff agreed to undertake the process herself. When mutation did not materialise, the plaintiff voluntarily cancelled the alleged agreement dated 03.09.2021, and defendant no. 1 refunded the amount of Rs. 2,00,000/-. Thus, the agreement stood cancelled and the plaintiff cannot seek specific performance or injunction. The plaintiff had knowledge of the sale deed executed in favour of defendants nos. 6 and 7; hence she cannot challenge the same. The subsequent purchasers have valid title.

12) Since the Agreement to Sell stood cancelled and the advance refunded, the plaintiff has neither possession nor any subsisting right to interfere with defendants' property or to seek any interim injunction. Grant of injunction would violate the defendants' lawful rights and cause irreparable injury to them, whereas refusal of injunction will cause no prejudice to the plaintiff, who has no subsisting enforceable right.

13) Defendants nos. 4 and 5 have filed their Say at Exh. 43 and submit that the plaintiff's averments and reliefs are wholly false, illegal and not binding upon them. They further state that the suit property (Gat No. 797, Mouje Adwan, admeasuring 0H-21R was originally purchased by them on 29/01/2013 under Registered Sale Deed No.346/2013. Subsequently, the said property was sold by them to Defendant No. 1 on 10/02/2016 under Registered Sale Deed No. 359/2016. Hence, after 10/02/2016, Defendants 4 and 5 have no right, title or concern in respect of the suit property.

14) It is their contention that the name of Defendant No. 1 could not be mutated in the 7/12 extract due to technical issues in the online system, and therefore their names continued to appear in the revenue record. Defendant No. 1 informed them of this difficulty in August 2023 and requested their consent for execution of a fresh purchase deed.

15) Relying on the representation of Defendant No. 1 and noting that their names still appeared in the 7/12 extract, Defendants No. 4 and 5 only gave their consent for Registration of Document No. 3226/2023 i.e. Sale Deed of the suit property in

favour of defendants nos. 6 and 7. They emphasize that they had no knowledge of the transaction between Defendant No. 1 and the purchasers, nor did they receive any consideration. The entire consideration was received solely by Defendant No. 1. Therefore, Defendants No. 4 and 5 are not parties to the alleged transaction and bear no liability arising therefrom.

16) They further submit that the plaintiffs' allegations, claims and prayers are untenable, not maintainable, and devoid of cause of action against them. No injunction can be granted against persons who have no connection with the alleged transaction and who have already transferred the property long ago. On these grounds, they prayed that the application for temporary injunction be dismissed with costs.

17) Defendant nos. 6 and 7 have filed their Say at Exh. 64 and submit that they are permanent residents of Adwan and are agriculturists. They state that Gat No. 797 was owned by (i) Vijay Vasant Kadu, (ii) Vitthal Sitaram Shinde and (iii) Dinkar Vitthal Shelar, and upon learning that the said lands were available for sale, they approached Defendants No. 4 and 5. After inspecting the property documents, including 7/12 extracts, nil encumbrance certificate and 6D entries, Defendants No. 4 and 5 confirmed that the property was free from all encumbrances and that no third party had any right, title, or interest therein. Accordingly, after negotiation, the sale price was mutually fixed at Rs. 9,92,100/-. Defendants No. 4 and 5 also informed that though a sale deed was executed in favour of Defendant No. 1 in 2016, the said transaction

had been cancelled and Defendant No. 1's name did not appear in the revenue record. Defendants No. 1 to 3 executed their signatures before the Sub-Registrar on 22/08/2023 to signify their consent for execution of the sale deed. Relying on these representations, Defendants Nos. 6 and 7 entered into the transaction without hesitation.

18) The Sale Deed No. 3226/2023 was duly registered, consideration of Rs. 5,36,500/- was paid by cheque to defendant No. 8 and the balance in cash to Defendants Nos. 4 and 5, and possession of the property was handed over. Defendants Nos. 6 and 7 submit that they have become the lawful owners and are in settled possession. They contend that the plaintiff has no right, title, or interest in the suit property and has filed a false and vexatious suit only to harass them and extract unlawful benefit. They deny all allegations made by the plaintiff and assert that no cause of action arises against them. On these grounds, Defendants Nos. 6 and 7 pray that the plaintiff's suit as well as the application for temporary injunction be dismissed with costs.

19) Heard rival parties at length. Perused Application (Exh.5), Say filed by the defendants and documents filed by the plaintiff.

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

<b>Sr. No.</b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
(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 4 :-**

21) All the points are interlinked to each other, hence, they are taken up together for discussion.

22) The plaintiff has filed the present application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking temporary injunction against defendant nos. 6 and 7 from alienating, transferring, or creating third-party interest in respect of the suit property pending disposal of the suit. Written Statements and Say have been filed by defendant nos. 1 to 3 at Exh. 75, defendant nos. 4 and 5 at Exh. 43, and defendant nos. 6 and 7 at Exh. 64.

23) It is the case of the plaintiff that defendant nos. 1 and 2 executed a Notarised Agreement to Sell dated 03.09.2021 in her favour for consideration of ₹4,11,000/-, out of which ₹2,00,000/- was paid through cheques and accepted by defendant no. 1. She contends that defendant no. 1 failed to get his name mutated in the revenue record and avoided execution of the Sale Deed. The plaintiff alleges that a subsequent Sale Deed dated 22.08.2023 was executed in favour of defendants nos. 6 and 7 with the consent of defendant nos. 1 to 3 and in collusion with defendants nos. 4 and 5, though defendants nos. 4 and 5 had already sold the property to defendant no. 1 in 2016. She claims the subsequent sale deed is illegal and not binding on her prior rights.

24) On the basis of the documents placed on record, namely the 7/12 extract, the Agreement to Sell dated 03.09.2021, the earlier Registered Sale Deed of 2016 in favour of defendant no.1, objections filed before the Talathi, Notice issued by the Tehsildar to the plaintiff, and the Police Complaint lodged by the plaintiff, a prima facie case emerges in favour of the plaintiff. Defendants nos. 1 to 3 have not disputed execution of the Agreement to Sell or receipt of ₹2,00,000/- towards part consideration. Their defence that the plaintiff cancelled the agreement and the amount was refunded is not supported by any documentary proof at this stage.

25) Thus, prima-facie, the Agreement to Sell dated 03.09.2021 appears to be subsisting, and the plaintiff has shown readiness and willingness. The subsequent Sale Deed dated

22.08.2023, executed on the basis of consent of persons who had purchased the suit property in the year 2016, raises substantial triable issues regarding its legality and binding nature.

26) If defendants nos. 6 and 7 are not restrained, they may further alienate the suit property, resulting in creation of third-party rights and multiplicity of proceedings. Such acts would cause irreparable loss to the plaintiff, which cannot be compensated in monetary terms. The balance of convenience, therefore, tilts in favour of preserving the suit property in status quo till adjudication of rights at trial.

27) Accordingly, the plaintiff has succeeded in establishing (i) prima facie case, (ii) balance of convenience, and (iii) likelihood of irreparable injury, warranting grant of injunction. Hence, I answer points nos. 1 to 3 in the affirmative and in answer to point no. 4, I pass the following order.

**ORDER**

1. The application is allowed.
2. Defendants Nos. 6 and 7 are hereby restrained from alienating, transferring, encumbering, or creating any third-party interest in the suit property, or from changing its nature or character, until final disposal of the suit.
3. Costs in the cause.

Date :- 10.12.2025.

(Yashshree Marulkar)  
Civil Judge Sr. Division,  
Igatpuri.