


MHPU240006032023 	<b>Manda Savkar Gorade</b> <b>Vs</b> <b>Anata Saba Jawale</b>
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### **ORDER BELOW EXH. 5**

The plaintiff has filed the present application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 to restrain defendants, their agent, servants or any other assignees claiming on behalf of them from creating any third party interest in the suit property, alienating the same and restrain from causing obstruction by any means to the peaceful possession of the plaintiff over the suit property till final decision of the suit.

### **Case of plaintiff in short is as follows:**

2. The present suit is instituted for specific performance of contract. The subject-matter of the suit property is agricultural land bearing Block No. 149 admeasuring 03 H 15 R situated at Devgaon, Tal. Ambegaon, Dist. Pune boundaries and description specifically described in the Para. No. 1 of the plaint. ("Suit Property".)

3. She further submitted that on 01/12/1993 father of defendants executed a deed of agreement to sale bearing No. 1502/1993 in favour of plaintiff. On 08/11/1993 before executing the said deed the plaintiff has given the amount of Rs. 1,00,000/- as a consideration amount before witnesses namely Dhondibhau Patilbua Khandage, Kundalik Fakira Padawal, Kantaram Rupali Dhandre and Arun Bansi Dere. It was decided that the remaining amount of Rs. 1,00,000/- will be given at the time of registering the documents. On

18/01/1999 by executing a deed of understanding on stamp paper of Rs. 20/- she gave the remaining amount of Rs. 1,00,00/- to the father of defendants. At that time the father of defendants took an amount of Rs. 1,00,000/- extra from plaintiff. The plaintiff has paid a whole amount of consideration to the father of defendants. From 1993 the plaintiff is in the possession of suit property.

4. On 22/04/2005 the father of the defendants died. The legal heirs of the defendant had the knowledge that their father had executed a deed of agreement to sale bearing No. 1502/1993 in favour of plaintiff. Despite that after the demise of their father, his heirs recorded their name on the 7/12 extract by mutation entry No. 685. On 01/07/2008 the mother of defendant Nos. 1 to 3 died. After her demise the names of defendant Nos. 1 to 3 were recorded on the 7/12 extract. On 17/11/2008 the defendant Nos. 2 and 3 relinquished their share by relinquishment deed No. 3176/2008 and by mutation entry No. 868 the name of defendant No. 1 only recorded on 7/12 extract.

5. After the demise of the husband of plaintiff, the son of plaintiff several times by meeting personally requested the defendant No. 1 for execution of sale deed but he avoided giving some reasons. The father of defendants accepted the consideration amount of suit property. After his demise it is the duty of defendant No. 1 to execute a sale deed. Now the defendant No. 1 is creating the third party interest in the suit property and alienating the suit property. For the decision of suit, a lot of time is required. So till the decision of suit defendant No. 1 will sell the suit property to third persons then the plaintiff will suffer irreparable loss. There will be multiplicity of proceeding. Hence he prayed to grant the temporary injunction till the decision of suit.

6. Defendants filed their say and strongly objected to the application. The Ld. Adv. for defendants submitted that the suit property is the ancestral property of defendants. On 26/08/1960 the name of father of defendants were recorded on 7/12 extract of suit property by mutation entry No. 570. Since then suit property is in his possession. After his demise the names of defendants and their mother were recorded on 7/12 extract by mutation entry No. 685. After the demise of the mother of defendants, the names of defendants were recorded as her heirs. On 17/11/2008 the defendant Nos. 2 and 3 relinquished their share by relinquishment deed No. 3176/2008 and by mutation entry No. 868 the name of defendant No. 1 only recorded on 7/12 extract. The said mutation entry was not challenged or cancelled by the plaintiff. Since 2005 the name of defendant No. 1 was recorded on 7/12 extract till today.

7. The father of defendants never discussed that he has executed the deed of agreement to sale with defendants. The said deed of agreement to sale is false. The father of the defendants was illiterate. He never signed. He never executed a deed of agreement to sale in favour of the plaintiff and did not accept the consideration amount. The plaintiff never requested the defendant for execution of the sale deed from 1993 to 2023. She never discussed with defendants regarding the same and did not send a notice dated 20/03/2023. He further submitted that the plaintiff has suppressed the material facts. She has not come up with clean hands before court. The prayer of the plaintiff is barred by limitation. Hence he prayed to reject the application.

8. Heard the learned advocate for the plaintiff Smt. V. S. Gavhane. She submitted as per his application. She further submitted that on 12/09/2006 defendants executed the deed of agreement to sale bearing No. 2351/2006 in favour of Shri. Vishwas Sopan Pokharkar, Shri. Subhash Sopan Pokharkar and

Smt. Aasha Shantaram Londhe. Also in 2008 defendants executed the deed of agreement to sale bearing No. 3177/2008 in favour of Shri.Navnath Popat Londhe and Shri. Mahesh Popat Londhe. On 05/02/2010 they cancelled the said deed of agreement to sale by executing deed of cancellation bearing No. 521/2010. Now the defendants are trying to alienate the suit property to third persons. The plaintiff has a prima-facie case. The defendants will sell the suit property to third persons then the plaintiff will suffer irreparable loss. There will be a multiplicity of proceedings. The balance of convenience tilts in favour of the plaintiff. Therefore, she prayed to allow the application.

9. Heard the learned advocate for the defendants Shri. U. D. Chavhan. He submitted that the suit property is ancestral property of defendants. The father of defendants never executed the deed of agreement to sale in favour of the plaintiff. He is illiterate and he never signed. His handwriting on deed of agreement to sale and deed of understanding is different. The said deed of agreement to sale is bogus. She did not submit the affidavit of witnesses of the deed of agreement to sale. The defendants are in possession of suit property. There is a 33 year delay in filing the suit. He further submitted that if the application is allowed then the defendants will suffer irreparable loss than the plaintiff. Hence he prayed to reject the application.

10. I consider the following points for determination and record findings thereon with reasons mentioned as under : -

Sr. No.	Points	Findings
1.	Whether the plaintiff has made out prima-facie case to grant temporary injunction ?	Yes
2.	Whether the plaintiff prove that balance of	Yes

	convenience lies in her favor ?	
3.	Whether the plaintiff proves that she will suffer irreparable loss if temporary injunction is not granted?	Yes
4.	What order?	Application is partly allowed.

### REASONS

11. In support of averments, the plaintiff has produced following documents:
- Photo copy of 7/12 extract of block No. 149 from 1965 to till date
  - Photo copy of application given by plaintiff to Tahasildar, Collector, Sub Divisional Officer, Talathi of Tal. Ambegaon Dist. Pune.
  - Photocopy of deed of agreement to sale bearing No. 1502/1993
  - Photo copy of deed of understanding dated 18/01/1999
  - Photo copy of deed of understanding dated 08/11/1993
  - Photo copy of notice sent by plaintiff through her advocate to the defendants
  - Photo copy of mutation entry Nos. 861, 685, 868
  - Verified copy of deed of agreement to sale bearing No. 5351/2006
  - Verified copy of deed of agreement to sale bearing No. 3177/2008
  - Verified copy of cancellation deed bearing No. 521/2010
12. Defendants have not filed any documents in support of their averments.

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

13. Point Nos. 1 to 3 are interlinked to each other. Therefore, they are discussed together to avoid repetitions.

14. The plaintiff has filed present application under Order XXXIX Rule 1 of the Code which provides as follows:

Cases in which temporary injunction may be granted -

Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

15. It is well settled that the Court is required to consider three ingredients while deciding an application of temporary injunction namely the existence of prima-facie case, irreparable loss and balance of convenience. There are well settled rules which govern the exercise of power of granting temporary injunction. It is, therefore, obvious that the power under rules 1 and 2 of order XXXIX of the Code cannot be mechanically exercised unless the existence of three ingredients are established.

16. Perused the pleadings and documents filed on record.

17. The suit is for specific performance of the contract. It is contention of plaintiff that the father of defendants executed the deed of agreement to sale bearing No. 1502/1993 in favour of plaintiff. On perusal of photo copy of deed of agreement to sale bearing No. 1502/1993, prima facie it appears that the father of defendants executed the said deed in favour of plaintiff for the consideration amount of Rs. 1,00,000/-. Prima facie it appears from the photo copy of deed of understanding dated 18/01/1999 and photo copy of deed of understanding dated 08/11/1993 that the plaintiff has paid the consideration amount of Rs. 1,00,500/- respectively. As per contention of defendants, whether the said deed of agreement to sale bearing No. 1502/1993 is false and bogus or not. Whether the handwriting of the father of defendants is different on deed of agreement to sale bearing No. 1502/1993 and deeds of understanding or not. Whether the father of defendants is illiterate and he has signed or not, it is a part of adjudication. It can be decided after the evidence. At this stage we cannot decide this by mere contention. Prima facie it appears that the father of defendants executed the deed of agreement to sale bearing No. 1502/1993 in favour of plaintiff. Whether that deed is false or bogus is the question of merit. It is decided after a full fledged trial. Therefore the plaintiff has proved the prima facie case lies in her favor.

18. On perusal of verified copies of deed of agreement to sale it prima facie appears that the defendants executed the deed of agreement to sale bearing No. 2351/2006 in favour of Shri. Vishwas Sopan Pokharkar, Shri. Subhash Sopan Pokharkar and Smt. Aasha Shantaram Londhe. Also in 2008 defendants executed the deed of agreement to sale bearing No. 3177/2008 in favour of Shri. Navnath Popat Londhe and Shri. Mahesh Popat Londhe. On 05/02/2010 they cancelled the said deed of agreement to sale by executing deed of cancellation bearing No. 521/2010. At this interim stage we only

consider whether prima facie there is threat to suit property. Upon perusal of these deeds of agreement to sale prima facie it appears that the defendants are trying to create third party interest and alienating the same. If the suit property is alienated then the subject matter of the suit will frustrate. The apprehension of the plaintiff that the defendants will alienate suit property is true and it is supported by all these transactions. If the suit property is alienated then there will be the multiplicity of proceedings and complexity. The court must try to avoid the multiplicity of proceedings.

19. The plaintiff also prayed that defendants be restrained from causing obstruction by any means to the peaceful possession of the plaintiff over the suit property till final decision of the suit. The plaintiff has not filed any document to show that she is in possession of suit property. She only contended that she has been in possession of suit property since 1993. On perusal of photocopy of deed of agreement to sale bearing No. 1502/1993 it prima facie appears that the possession of suit property will be given at the time of sale deed. Therefore the plaintiff prima facie failed to show that she is in possession of suit property. Therefore this prayer of the plaintiff can not be granted.

20. From the above considerations it appears that the plaintiff has proved three significant condition precedents for grant of temporary injunction. Considering the facts and law, it appears that plaintiff has shown prima-facie case in her favour to grant a temporary injunction. Therefore, the balance of convenience lies in her favour. If the temporary injunction is not granted then the subject matter of the suit will frustrate. Therefore, if the application is rejected then the plaintiff will suffer irreparable loss. Consequently, I answer as to **point Nos. 1, 2 and 3** partly in the **affirmative**.

**AS TO POINT NO. 4:-**

21. Considering the findings of point No. 1 to 3. The application deserves to be partly allowed. Hence as to point No. 4 the following order is passed.

**ORDER**

1. The application is partly allowed.
2. The defendants either themselves or through their agents, servants, assignees, representatives claiming on behalf of them are restrained by granting the temporary injunction against them from creating any third party interest in the suit property and alienating the same till the decision of the suit.
3. No order as to the costs.

Sd/-

Place: Ghodegoan

(Sneha Sunil Pulujkar)

Date: 14.08.2025

2nd Joint Civil Judge Junior Division,  
Ghodegoan