

ORDER BELOW EXH.5

1] The plaintiffs have claimed the Temporary Injunction restraining defendants from alienating the suit property or creating any kind of third party interest therein till the disposal of main suit.

2] In short, it is the case of plaintiffs that defendant No. 1 is lawful holder of the suit properties as described in plaint para-2. The suit properties are the tenancy lands within the provisions of the Maharashtra Tenancy and Agricultural Lands (for short, “the Tenancy Act”). As such, the prior permission from the authorities under the Tenancy Act was required before alienating the suit properties.

3] In the year 1996, defendant No. 1 was in need of money. She approached the plaintiffs and put proposal for purchasing the lands after obtaining due permission from the concerned Authority. She was ready to co-operate the plaintiffs for obtaining such prior permission. The plaintiffs also agreed for the proposal with the condition as they were also looking for purchasing such type of lands. After the negotiation, the consideration amount was fixed at Rs. 3,50,000/- per Acre totaling to Rs. 40,41,000/- for the entire lands. Accordingly, defendant no. 1 executed two Vachan Chithi (Isar Pawati) dated 14/09/1996 and 15/09/1996 respectively in favour of plaintiff no.2,3 and then plaintiff no.1 respectively after accepting the earnest amount of Rs. 6,51,000/-.

4] Subsequently, an agreement of sale was executed and registered with the Notary on 17/09/1996 by defendant no. 1 after receiving further amount of Rs. 13,94,431/- in presence of witnesses. In this way, defendant no. 1 has received total amount of Rs. 20,45,437/- as part consideration amount. In addition to execution of the agreement, defendant no. 1 also executed a Power of Attorney on 04/03/2016 in favour of plaintiff no. 1 for giving effect to the agreement. Despite the aforesaid commitment, defendant no. 1 did not take proper steps to fulfill the condition precedent of getting the prior permission from the concerned authorities thereby unnecessarily causing delayed in the progress in the transaction. The plaintiffs also reminded defendant no. 1 particularly in the year 2008. However, defendant no 1 did not pay any heed to it and kept the plaintiffs waiting on false promises.

5] Recently, the plaintiffs have come to know the execution of one sale transaction dated 26/02/2013 in respect of one of the suit properties bearing No. Survey No. 42/0 in favour of defendant no 2. Prior to execution of the aforesaid sale deed, defendant no 1 had also executed agreement of sale dated 18/10/2012 in that respect. The very act on the part of defendant no 1 is nothing but sheer violation of terms of agreement thereby adversely affecting the contractual rights of plaintiffs. The very act of defendant no. 1 impliedly suggests that she is no more interested to go with the contractual obligation or rather she has clearly refused to perform her part of contract by her own conduct. Thus, the cause of action arose for filing the present suit.

6] As defendant no 2 has purchased one of the suit properties in existence of the contractual right lying in favour of plaintiffs, he is also bound to perform the part of contract to that extent being the successor-in- interest. Looking at the earlier transaction with defendant no. 2, the plaintiffs have further expressed their apprehension that defendant no 1 will alienate the remaining suit properties alike the earlier transaction thereby adversely affecting the contractual rights of plaintiffs. They lastly prayed for grant of the application.

7] Defendant no 1 has resisted the application by her Written Statement cum Reply (Exh. 22). Although she has resisted the claim of plaintiffs, she has not disputed certain facts such as the status of suit properties with restricted ownership under the Tenancy Act the execution of the agreement between the plaintiffs and her in respect of the suit properties way back in the year 1996. She has also not disputed the receipt of Rs. 6,51,000/- from the plaintiffs in pursuance of the agreement. However, she has specifically denied that she has executed any Vachan Chithi or the agreement of sale at any point of time in favour of plaintiffs in the manner as alleged. She has also denied the receipt of further amount of Rs. 13,94,431/- as allegedly paid by plaintiffs at a time of execution of agreement of sale. As per the case of defendant, the plaintiffs have only obtained her thumb impressions on various documents without knowledge of the contents lying therein. Besides, the defendant has come with the alternative submission that it was the responsibility of plaintiffs to take steps and

spend the money as required for obtaining the prior permission of the concern authorities. The only six months period was prescribed in the agreement for giving full effect to the transaction. Despite, the plaintiffs did not perform their part of contract within the specified period or even reasonable period as expected in the ordinary circumstances. The plaintiffs remained silent about 17-18 years for no reasons. The very conduct of plaintiffs debar them from obtaining any equitable relief such as the specific performance of the contract. As the plaintiffs themselves have committed the breach of contract on their part, they cannot claim any kind of relief as against defendant no 1.

8] As the substantial time was already lapsed without progress in the matter, the defendant had no other option than to further deal with the suit properties as a matter of necessity. Thus, she entered into an agreement of sale in respect of Survey No. 42/0 with defendant no 2 in the year 2012 and further transferred the said property by registered sale deed dated 26/02/2013. Defendant no. 1 lastly prayed for rejection of the application.

9] Defendant no. 2 has resisted the application in the similar fashion as resisted by defendant no 1 by filing his Written Statement at Exh. 34. As per his case, he has purchased Survey no 42/0 bonafidely and without notice of the earlier transaction entire for valuable consideration of Rs. 82,00,000/-. As such, defendant no. 2 has acquired a good and complete title over the land Survey no. 42/0. As the said property was subject matter of Tenancy Act, the prior permission for sale was also duly obtained. Even otherwise, the earlier transaction is

also not enforceable in the eye of law as it is not within limitation. He lastly prayed for rejection of the application.

10] Heard both the sides and also gone through the documents on record. The points arise for my determination along with my findings thereon are as follows:

<u>Sr. No.</u>	<u>ISSUES</u>	<u>Findings</u>
1	Whether the plaintiffs have prima facie case ?	No.
2	Whether the balance of convenience lies in their favour ?	No.
3	Whether the irreparable loss will be caused to the them if the Temporary Injunction is not granted ?	No.
4	What order and decree ?	The application is rejected.

REASONS

AS TO POINT NO.1 :-

11] The plaintiffs have come with the specific case that defendant no. 1 has executed the agreement of sale dated 17/09/1996 in their favour in respect of the suit properties. The agreement dated 17/09/1996 supports the case of plaintiffs on the point of creation of contractual rights in their favor for total consideration amount of Rs. 40,41,000/-. The earnest or part consideration amount of Rs. 13,94,431/- seems to have paid at the time of execution of agreement itself. Some more amounts seem to have parted with during the years 2012 and 2013 as can be gathered from the cheques dated

18/10/2012, 26/02/2013, 27/02/2013, 02/04/2013, 03/04/2013 and 05/04/2013. Prior to the receipt of aforesaid amount, defendant no. 1 has also acknowledged Rs. 6,51,000/- by two different Vachan Chithis dated 14/09/1996 and 15/09/1996 respectively.

12] Defendant no. 1 although challenged the validity of the agreement and the Vachan Chithis on the ground of fraud and forgery, the very allegations cannot be appreciated at this preliminary stage. The trial will have to be taken up for appreciating those facts. At this juncture, the documents placed on record are sufficient to support the case of plaintiffs on the point of creation of contractual rights in their favor.

13] It is also the matter of record, the suit properties are the tenancy lands. As such, the prior permission is required under the Tenancy Act before dealing with it in any form. The specific clause is also found place in the agreement which is shown as condition precedent. Although, the plaintiffs have alleged that it was the duty of defendant no. 1 for bringing the prior permission, the contents of agreement disclose that the plaintiffs themselves have taken responsibility to obtain such permission with the co-operation of defendant no. 1. Not only this, the plaintiffs have also got executed a power of attorney from defendant no. 1 for giving effect to such condition.

14] When the contents of agreement and the power of attorney are sufficient to show that the plaintiffs had taken

responsibility of obtaining the prior permission with the co-operation of defendant no. 1, the statement of plaintiffs that defendant no. 1 deliberately avoided for taking initiative in the matter of the prior permission cannot be entertained. When the responsibility was cast upon the plaintiffs to take initial steps in that directions, the plaintiffs have to show what kind of initial steps they have taken in that direction. It is the matter of fact, the plaintiffs have not taken any steps in that direction for long considerable time around 17-18 years. No explanation is given by the plaintiffs in that regard either. The very conduct of plaintiffs remaining silent for a considerable period does not support to his prima facie case.

15] Apart from the above, the plaintiffs have also not brought on record any material which would show that the defendant herself was reluctant for extending her co-operation in that matter at any point of time. Although the plaintiffs have claimed that they had issued one letter to defendant no. 1 in that respect in the year 2008, the very letter does not find place on the record. In absence of such materials, the contention of plaintiffs that defendant no. 1 was at fault cannot be accepted at least this stage.

16] The plaintiffs in support of their case, have relied upon **Maharwal Khewaji Trust Vs. Baldev [2005(1) Mh.1.J.]** It has been held that unless the case of irreparable loss is made out on behalf of defendant, the court should not permit nature of property being changed which includes also alienation on transfer of property. In the case in hand, the plaintiffs have failed to establish the first and

foremost ingredient of equitable relief such as the prima-facie case. Thus, the question of going into the discussion of the aspect of irreparable loss which was subject matter in the aforesaid case law does not arise. The facts of the case in hand and the facts lying in the aforesaid case law being totally different from each other, the case law relied by plaintiffs cannot be applied to the case of plaintiffs.

17] In view of the above facts and circumstances, the case of defendant no. 1 that the plaintiffs themselves were not ready and willing to perform their part of contract seems to be just, proper and more probable than the case of plaintiffs. Since the conduct of plaintiffs themselves are found to be improper in the performance of the contract, their case cannot be said as prima facie one as required for seeking equitable relief.

18] As the case of plaintiffs itself is not found as prima-facie one, there is no reason to go into the merits of further transaction of sale dated 26/02/2013 executed in favour of defendant no. 2 in respect of land Survey No. 42/0. Even otherwise, there is nothing on record which would show that he had sufficient opportunity of having known the disputed transaction. As the agreement of sale and the receipts were unregistered ones, there is no reason to have knowledge thereof to defendant no. 2. As such, the contention of plaintiffs with regard to the subsequent transaction of sale took place with defendant no. 2 cannot be accepted as well. Resultantly, I hold that the plaintiffs have failed to establish their prima facie case. Hence, I answer Point No. 1 in the negative.

AS TO POINT NO. 2 AND 3 :-

19] As the plaintiffs have failed to establish their prima-facie case, the question of considering further equitable grounds such as the balance of convenience and irreparable loss does not arise. Hence, I answer Point No. 2 and 3 in the negative.

AS TO POINT NO.4:-

20] As the plaintiffs have failed to establish all three ingredients required for grant of the equitable relief, the Temporary Injunction will have to be refused by rejecting the application with costs. Hence, in answer to point no. 4, I pass the following order.

ORDER

The application (Exh. 5) is rejected with costs.

Panvel
Dated : 30-8-2018.

(U. L. Pathak)
Jt. Civil Judge, Sr. Dn., Panvel.