

MHRG040012742025



Spl. C. S. No. 138/2025

Velaji Menat & Ors.

Vs

Shashikaran Shetty & Ors.

Order below Exh. 05

01. This is the application filed by plaintiffs under Order 39 Rule 1 & 2 of CPC for grant of temporary injunction restraining defendant no.3 from creating third party interest in the suit property and from changing nature of the suit property.

02. This suit is filed by plaintiffs for specific performance of contract and for perpetual injunction. It is contended by plaintiffs that out of Gat no.4/1/B admeasuring 1 H 3 R and 10 square meter, defendant no.1 is the owner of 40 R land situated at mouje Khanavale, Tal. Pannel, Dist. Raigad. For the sake of convenience, hereinafter this 40 R land will be called as suit property. Plaintiffs want to purchase suit property and defendant no.1 also want to sell it and therefore on 11.01.2024 Memorandum of Understanding (MOU) was executed between plaintiffs and defendant no.1. It was agreed between both parties to sale the suit property @ Rs.13,75,000/- per gunthas for total consideration of Rs.5,50,00,000/-. At the time of execution of MOU plaintiffs paid Rs.5,00,000/- through cheque no.117209 dated 11.01.2024 of Union Bank of India branch Kharghar and Rs.5,00,000/- through cheque no.537553 dated 11.01.2024 of R.D.B.I. Bank branch Vashi to defendant no.1 and agreed to pay the remaining amount of consideration Rs.5,40,00,000/- at the time of executing sale deed. It was also agreed that before execution of sale deed, defendant

no.1 shall conduct measurement of suit property, prepare akarphod patrak and prepare new 7/12 extract of suit property. It was decided that sale deed shall be executed within 15 days after preparation of new 7/12 extract. The obligation was on to defendant no.1 to measure the suit property to prepare akarphod patrak and to prepare new 7/12 extract. Plaintiffs were ready and willing to perform their part of contract. However, instead of performing his part of contract defendant no.1 sent notice dated 03.06.2024 to plaintiffs and cancelled the agreement and was ready to repay the amount of Rs.10,00,000/-. Therefore, plaintiffs sent reply of notice on 11.06.2024 and denied the notice of defendant no.1. Thereafter, plaintiffs visited defendant no.1 and tried to convince him for performance of contract. However, on 07.03.2025 defendant no.1 sold the suit property through his power of attorney holder defendant no.2 to defendant no.3 vide registered sale deed bearing no. 4280/2025. The MOU executed between plaintiffs and defendant no.1 dated 11.01.2024 is still in existence and therefore the sale deed executed by defendant no.1 in favour of defendant no.3 is illegal and not binding on plaintiffs. On 17.03.2025 plaintiffs filed written objection before Tahasidar Panvel and Talathi Khanavale for restraining to take mutation entry on the basis of the execution of sale deed. There is possibility that defendant no.3 may sale the suit property or create third party interest and hence plaintiffs filed this application for temporary injunction restraining defendant no.3 from creating third party interest or making any change in it.

03. After service of summons defendant no.3 appeared and filed his written statement at **Exh.34** and also filed pursis at **Exh.37**

to treat the same as reply to application for temporary injunction. He admitted description of suit property and also admitted execution of MOU by defendant no.1 in favour of plaintiffs but he contended that said MOU is an unregistered document and executed in violation of section 17 of the Registration Act. He also contended that there is no provision of executing MOU in respect of sell of immovable property and therefore it is not binding on defendant no.1. He also contended that MOU cannot be called as agreement to sale. He contended that defendant no.1 terminated the MOU by sending notice to plaintiffs and also ready to refund the amount Rs. 10,00,000/-. He admitted execution of registered sale deed of suit property by defendant no.1 in his favour on 07.03.2025. He contended that MOU is cancelled by defendant no.1 and thereafter sale deed is executed by defendant no.1 in his favour and therefore if injunction is granted then he will suffer irreparable loss. He contended that the objection raised by plaintiffs for taking mutation entry on the basis of sale deed is also rejected by Tahsildar on 04.06.2025. He contended that defendant no.3 become absolute owner of suit property and therefore he has every right to use or dispose of suit property as per his convenience. Thus according to him, there is no prima facie case and balance of convenience in favour of plaintiffs and therefore the application needs to be rejected.

04. Following points arise for determination and I have recorded my findings against each of them along with reasons as under -

POINTS

FINDINGS

1	Whether plaintiffs proves that prima facie case exists in their favour?	--	..Yes..
2	Whether balance of convenience lies in favour of plaintiffs?	--	..Yes..
3	Whether plaintiffs will sustain irreparable loss if injunction is not granted in their favour?	--	..Yes..
4	What order?	--	As per final order.

REASONS

05. As to point no.1 :-

Both plaintiffs and defendant no.3 are relying on their pleadings in support of their application & reply under Order 39 Rules 1 & 2 of CPC. The description of suit property is admitted to both parties. The execution of MOU by defendant no.1 in favour of plaintiffs is also admitted by defendant no.3. The objection of defendant no.3 is that there is no provision to execute MOU in respect of sale of immovable property and MOU can not be treated as agreement to sale. Plaintiffs submitted that the MOU is in fact agreement to sale. They relied on the citation of Hon'ble Bombay High Court, *AIROnline 2020 Bom 657, Raghuvir Prasad Kalicharan Kaithwar through Lrs Vs Hridainarain Rampakhan Pande*. It is held by Hon'ble High Court that *'It is settled position of law that, while interpreting a document, the real intention of parties to be deciphered, from complete reading of document and the surrounding circumstances thereof. Nomenclature of the document is hardly conclusive and much importance can not be*

attached to the nomenclature alone since it is the real intention which requires to be gathered.'

06. Plaintiffs filed MOU on record. Perusal of this document shows that this agreement is between plaintiffs and defendant no.1 mentioning defendant no.1 as vendor and plaintiffs as purchaser. The description of suit property is given. The intention of parties to sell and purchase the suit property for consideration is also mentioned in it. The payment of advance amount Rs. 10,00,000/- is also mentioned in it. The fact of receipt of Rs. 10,00,000/- by defendant no.1 is not disputed by defendant. Even the obligation is casted on vendor to apply for survey of land, to prepare akarphod patrak and to prepare new 7/12 extract within 70 days and thereafter burden is casted on plaintiffs to execute sale deed within 15 days. It also shows that the balance consideration amount will be paid at the time of execution of sale deed. Thus from complete reading of MOU, it is clear that the parties were intended to sell and purchase suit property. Thus the MOU is not only an expression of interest but it is agreement to sale suit property.

07. It is argued by defendant no.3 that MOU is not enforceable in law. Plaintiffs relied on the authority of Hon'ble Delhi High Court in ***2024 SCC Online Del 4595, Rohit Malhotra Vs Gurvinder Singh Toor*** to show that MOU can qualify as binding and concluded contract. It is held by the Hon'ble High Court that MOU can be enforceable if they fulfill the essentials of section 10 of Indian Contract Act. The Hon'ble High Court also relies on the authority ***Jai Beverages Pvt. Ltd. Vs State of Jammu and Kashmir & Ors. 2006 (4) SCJ 401*** wherein it was observed that binding nature and enforceability of a MOU can be deduced from the

intention of the parties, the language used in the agreement, the nature of agreement and also the conduct of the parties following the execution of the MOU. The Hon'ble High Court thus observed that 'the principles which thus emerge for interpreting a MOU to ascertain if it is an enforceable contract are (1) the nature of the agreement, (2) the language used, (3) the intention of the parties to create a legal and enforceable obligation, (4) the conduct of the parties and (5) nomenclature or the heading of the document is not sufficient to determine its enforceability.'

08. In the case in hand also from the language used in MOU it can be gathered that the intention of the parties was to create a legal and enforceable obligation to sell and purchase suit property. Hence only because the heading of document is Memorandum of Understanding, the argument of the defendant no.3 can not be accepted that it is not enforceable. The terms of the MOU clearly suggest that it is an agreement for sale of suit property.

09. It is also argued by defendant no.3 that the MOU is unregistered document and therefore u/s 17 of The Registration Act, it is not binding on anyone. However, it is settled law that an unregistered document can be tendered as evidence of a contract in a suit for specific performance. Plaintiffs relied on the authority of Supreme Court in *AIR Online 2023 SC 257 R. Hemalatha Vs Kashthuri* and in *2025 SCC Online SC 1067 Muruganandam Vs Muniyandi (Died) through Lrs.* In both these authorities, Hon'ble Supreme Court held that 'as per proviso to sec. 49 of the Registration Act, an unregistered document namely unregistered agreement to sale shall be admissible in evidence in a suit for

specific performance and the proviso is exception to the first part of section 49.

10. Thus the MOU dated 11.01.2024 executed by defendant no.1 in favour of plaintiffs is legal enforceable and binding on defendant no.1. The prima facie case exist in favour of plaintiffs. Hence, I answer point no.1 in affirmative.

11. **As to point no.2 & 3 :-**

Plaintiffs proved that the MOU dated 11.01.2024 is in fact agreement to sale suit property. Said agreement is binding on both parties. Perusal of documents filed on record by plaintiffs shows that plaintiffs published notice in daily news paper just after execution of MOU calling objections in respect of MOU. The terms of MOU shows that the obligation was on defendant no.1 to apply for survey of suit property and to prepare akarphod patrak & 7/12 extract. The notice for termination of MOU issued by defendant no.1 to plaintiffs shows that the work to apply for measurement of suit property was given to representative of plaintiffs. However, the MOU does not show such condition anywhere. The duty was casted on defendant no.1 to prepare akarphod patrak and 7/12 extract and not on plaintiffs.

12. Defendant no.3 relied on the authority of Supreme Court, *AIR 2018 SC (Supp) 1538, Sushil Kumar Agarwal Vs Meenakshi Sandhu and Ors.* This case was in respect of development agreement and developer failed to satisfy conditions under sub-clauses (I) & (ii) of sec 14(3)(c) of Specific Relief Act. In the case in hand the agreement is not development agreement but purely agreement to sale. The facts in this case are totally

different than the case in hand and therefore this citation is not applicable in this case.

13. Defendant no.3 also relied on the authority of Hon'ble Supreme Court, *AIR 1996 SC 1504, M/s P. R. Deb and Associates Vs Sunanda Roy*. In this case the respondent failed to comply with the term of the agreement relating to payment of amount and therefore it was held that decree for specific performance can not be granted. However, in the case in hand prima facie it is seen that defendant no.3 failed to comply the terms of MOU. Therefore the aforesaid citation is not applicable here.

14. Prima facie it seems that the defendant no.1 sold the suit property to defendant no.3 by violating the terms of MOU. Defendant no.3 also submitted that he becomes absolute owner & possessor of suit property and he has every right to use or dispose of the suit property. The balance of consideration lies in favour of plaintiffs. Plaintiffs will suffer irreparable loss if injunction is not granted in favour of plaintiffs. Hence, I answer point no. 2 & 3 in affirmative.

15. Having regard to aforesaid discussion, I pass the following order.

Order

1. The application **Exh.5** is allowed.
2. The defendant no.3 is hereby temporarily restrained from creating third party interest in the suit property and from changing the nature of suit property or constructing anything on it, till decision of the suit.

3. Cost in cause.

Date :01/08/2025

Place :Panvel

(R. Y. Khandare)
5th Joint Civil Judge; Sr. Div,
Panvel.