

Order Below Exh.26
in Special Civil Suit No. 27/2024
CNR No.MHSN02-000116-2024
(Hemlata Mahadev Kore Vs. Sudha Balasaheb Vader & Ors.)

Perused the application and say (Exh.34) on it. Heard Learned advocate of both parties and gone through the record of proceeding.

2. Considering the arguments advanced at bar and evidence on record. Following points arose before me for determination. Those points along with my findings thereon for the reasons stated thereafter, are as under.

	<u>Points</u>		<u>Findings</u>
1)	Whether the plaintiff proves <i>prima-facie</i> case ?	...	No.
2)	Whether balance of convenience lies in favour of the plaintiff ?	...	No.
3)	Whether the plaintiff will suffer irreparable loss, if application is rejected ?	...	No.
4)	What order ?	...	Application is rejected.

REASONS :-

3. To support of their contentions the plaintiff has produced,

paper publication notice issued by third party dated 28/03/2025.

4. On the other hand, defendant No. 1 to 3 have produced Memorandum of understanding between defendants and Tayappa Omase and affidavit of Abaso Tayappa Omase (Exh.36/1 & 36/2).

As To Point No. 1 To 3:-

5. Considering the facts of the case it will be convenient to discuss all these points together to avoid repetition. So taken up together for discussion.

6. Present suit is for specific performance of oral agreement to sell. The plaintiff has come with the case that the suit property specifically described in para no. 1 of application under consideration is ancestral property of defendant no.1 to 3.

7. Prior to this application, the plaintiff had moved similar application at (Exh.5) seeking an interim injunction against the defendants to restrain them from alienating the suit property. The suit is based on oral agreement to sell. The defendants have specifically denied alleged oral agreement to sell. While deciding application (Exh.5), this court has prima-facie held that, existence of such agreement to sell has not been prima-facie proved by the plaintiff. No documentary evidence has been brought on record to show that, some earnest amount has passed to the defendants based on oral agreement

to sell. Admittedly possession of the suit property is with the defendants. No prima-facie evidence has been placed on record to disclose the apprehension of the plaintiff to be carried into effect by the defendants. The pleading of plaintiff is absolutely silent in respect to the particulars and date and time of alienation at the hands of the defendants. Nothing is filed on record by the plaintiff to disclose the apprehension to be carried into effect by the defendants. No document is filed on record to suggest that defendant is attempting to alienate suit properties.

8. In this backdrop now present application has been moved on the basis of paper publication given by third parties in local news paper i.e. 'Dainik Pudhari' dated. 28/03/2025. As mentioned earlier, Said application (Exh.5), had been decided on merit. From record it appears that, no appeal has been preferred against said order, so it has attended finality. Though due to public notice the plaintiff got fresh cause of action to move application seeking interim injunction, and there is no bar on filing consecutive applications than also as the plaintiff has not produced any evidence to show that alleged oral agreement to sell had been entered into between the parties. Some amount had been passed as part consideration or the plaintiff even has failed to submit affidavit of any witness who was present at the time of alleged transaction. Moreover, in absence of new prima facie evidence earlier findings in application (Exh.5) remains intact. Thus it cannot be said that the plaintiff has prima facie case.

9. Further it is mentioned in the notice dated 28/03/2025 that, the third parties are intending to purchase the suit property. Moreover, it is pertinent to note here that, it has been specifically mentioned in said notice that, the sale-deed, if any, is executed then it will be subject to the decision of this suit. However, in the instant case, it transpires from record that the suit property is ancestral property of the defendants. They are in possession of it. The plaintiff fails to establish greater injury and inconvenience or prejudice which will be caused to him. Perusal of the prayer clause, shows that the plaintiff seeks a relief to restrain the defendants from alienating the suit property. However, as per provisions of section 52 of Transfer of Property Act, a property cannot be transferred or otherwise dealt with during the pendency of suit so as to affect the right of any other party. Thus, a bar under section 52 of the Transfer of Property Act comes into picture. Nothing is shown by the plaintiff to prima-facie satisfy that defendant is about to alienate the suit properties and a restrain is necessary in addition to section 52 of the Transfer of Property Act.

10. Thus, a fair and bona-fide question is not raised by the plaintiff. One has to consider the greater mischief or inconvenience which is going to be caused in case of grant or refusal of this application. The plaintiff failed to prove his strong prima facie case for which trial is ensued. If an injunction is refused no greater loss or inconvenience would be caused to the plaintiff. However, if an injunction is granted, defendant would suffer greater inconvenience

who is admittedly owners in possession of suit property. Resultant to above discussion, I answer point nos.1 to 3 in the negative and pass following order for point no.4.

ORDER

The application below Exh. 26 is hereby rejected.

Date :-09/06/2025.

Place :- Sangli.

(Vibha P. Gaikwad)
2nd Jt. Civil Judge, Sr. Division,
Sangli.