

MHSN080002622019



**Order below Ex.52 in RCS 50/2019  
Soma Rathod Vs Dhannavva Kamble**

The application is under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (the C.P.C).

2 Perused the application, say, and the record.

3 Heard.

4 The suit is for a decree of Specific Performance of the contract in respect of the suit property is more particularly mentioned in para 1 in the plaint. There was an Agreement of Sale (the AoS) executed by defendant in favour of the plaintiff for valuable consideration of Rs.1,25,000/- (Rs.One Lakh Twenty Five Thousand only) out of which an amount of Rs.1,05,000/- (One Lakh Five Thousand only) has been paid by the plaintiff, to the defendant while executing the registered AoS on 05/10/2010. It was an essential condition that the defendant has to obtain the necessary permission for the suit property being of occupancy class 2 that is of restricted tenure. The defendant obtained the requisite permission on 18/08/2017. The plaintiff approached the defendant, who failed to perform her part. The plaintiff issued notice on 30/05/2018. Hence, the present suit alongwith an interim injunction application.

5 Brief facts of the defendant's case:- The defendant has denied that the transaction was of AoS. It was contended to be a hand loan agreement whereby the defendant has advanced hand loan of Rs.1,25,000/- (Rs.One Lakh Twenty Five Thousand only) out of which an amount of Rs.1,05,000/- (One Lakh Five Thousand only) was paid by the plaintiff to the defendant, as a security, for the hand loan, the document was executed. After 6 months from the AoS, the defendant visited the plaintiff alongwith the panchas, the plaintiff refused to accept the amount and thereby, delayed the cancelation of the deed. The deed was not to be acted upon. The market value of the land is much higher than that mentioned in the deed. Hence, the suit is objected to.

6 The plaintiff has relied upon the following documents viz.,

Sr.No	Particulars of the documents
-------	------------------------------

1	AoS (Exh.22)
2	Affidavit of the defendant
3	Order of the Collector
4	Challan
5	Notice

7 The defendant has not relied upon any document.

8 The following points arose for my determination, to which I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Whether the plaintiff prove prima-facie case in his favor?	Yes
2	Does the plaintiff proves balance of convenience tilts in his favor?	Yes
3	Does the plaintiff proves he would suffer irreparable loss, if interim injunction is refused?	Yes
4	What order?	As per the final order.

Reasons

Points 1 to 3

9 All the points for determination are inter-linked. To avoid repetition and for the sake of brevity they are taken up for hearing and discussion together.

10 It is settled law that prima-facie case, does not mean prima-facie title or the case proved to the hilt. The prima-facie proving of the above points for determination are sine qua non for allowing the application. The application has to be exercised Ex debito justitiae. Therefore, the pleadings and the material have to be prima-facie, judicially scanned.

11 As a matter of fact and record, the AoS is a registered document. It prima- facie, mentions of the transaction, which prima facie appears to be a transaction of the AoS. The requisite permission has been produced on record below Exh.3/Sr.No.4. A copy has been same has been directed to

the present plaintiff. The prayer is to restrain the defendant from creating a third party right, title and interest in the suit property.

12 It is settled law, that the AoS can not confer a title on the plaintiff. The prayer in the application is not to create a third party right, title, and interest. Prima facie, nothing to suggest that the transaction was of hand loan or otherwise. Prima facie, the registered document below Exh.22 cannot be lightly brushed aside. Therefore, no prejudice would be caused to the defendant is restrained from getting third party right, title, and interest in the suit property.

13 For the above reasons, the plaintiff proves prima-facie case in his favor. The balance of convenience tilts in favor of the plaintiff. Therefore, the plaintiff may suffer irreparable loss/harm/prejudice, if interim injunction is refused. The comparative mischief that would be caused to the plaintiff, would be more, if interim injunction is refused. Costs follows the event. The points for determination are answered accordingly. Hence, the following

#### **Order**

The defendant, his agents, servant, attorney or anybody claiming through him is hereby restrained by way of interim injunction from creating third party right, title and interest in the suit property more particularly mentioned in para 1 of the plaint, in any manner what so ever, till disposal of the suit.

2 The ad-interim order (Exh.52) is hereby made absolute.

Jath  
Date:-07/03/2026

( Sanjay P Bunde)  
Jt C.J.J.D, Jath