

MHPU020026212014



**ORDER BELOW EXH. 79 IN Spl.C.S. NO. 689/2014**  
**( M/s. Sarish Properties Vs. Suvarna Ashok Jadhav and Ors.)**

The plaintiff has filed this application for temporary injunction as per Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code').

**The case of the plaintiff, in short, is as under -**

2. Agricultural land Gat No.281 admeasuring 1 H. 99 R situated at Village Andhalgaon, Tal. Shirur, Dist. Pune, more particularly described by four boundaries in plaint para No. 1 is '**the suit property.**'

3. According to the plaintiff, defendant No. 1 with the consent of defendant No. 2 and 3 had executed *Visarpavati* in his favour to sale the suit property for the consideration of Rs.1,65,00,000/-. Earnest money of Rs.20,00,000/- was also paid to them and *Visarpavti* was notarized on the same day. The plaintiff was ready and willing to perform his part of the contract but the defendants by denying their rights illegally prepared bogus Agreement to Sell and the Sale Deeds in favour of defendant No. 11. Thereafter, defendant No. 11 also sold some of the portions of the suit property to defendant No. 12 and 13 by Sale Deed dated 21/02/2014 and 24/02/2014. Lastly, defendant No. 11 to 13 again sold the suit property to defendant No. 14 by Sale Deed dated 25/04/2014.

4. The plaintiff has resisted his claim by issuing notice as well as reply to the notices of the defendant. But to deny the plaintiff's right through *Visarpavati*, the defendants have executed illegal, false, bogus Sale Deeds to cause the loss to the plaintiff. After demise of defendant No. 14, defendant No. 14A to D were entered in his place. There is an apprehension that defendant No. 14A to D will alienate or create third party interest in the suit property. Therefore, prayed for temporary injunction.

5. Per-contra, defendant No. 14A to D have resisted application by filing say at **Exh. 83**. According to them, **they are not willing to sale or alienate the suit property**. The plaintiff has not pleaded the fact of apprehension. The defendants have converted the agricultural land into Non-Agricultural purpose and constructed an industrial shed and one of the member of their family is running a business in the suit property. There is no incident to show for passing any injunction order against the defendant. Therefore, prayed for rejection of the application.

6. Advocate for defendant No. 14 A to D by filing pursis informed that, **contention of not willing to sale can't be treated as undertaking**.

7. The points for determination along with my findings thereon are as under :-

| SR.No. | POINTS                                                                            | FINDINGS |
|--------|-----------------------------------------------------------------------------------|----------|
| (1)    | Whether the plaintiff proves his <i>prima-facie</i> case ?                        | Yes.     |
| (2)    | Whether balance of convenience lies in favour of plaintiff ?                      | Yes.     |
| (3)    | Whether irreparable loss would be caused to plaintiff, if injunction is refused ? | Yes      |

(4) What Order ?

Application is partly  
allowed.

### **REASONS**

#### **AS TO POINT NO. 1 -**

8. To substantiate the prima-facie case, learned Advocate for the plaintiff submits that despite *Visarpavati* defendant No. 1 to 3 have sold the suit property by executing illegal and bogus Sale Deeds and thereafter, number of Sale Deeds were executed amongst defendant No. 1, 11 to 13 and 14. The plaintiff has produced *Visarpavati* which prima-facie shows the existence of transaction between the parties. Agreement to Sell dated 30/03/2009 and the Sale Deeds are illegal which have been prepared to deny the plaintiff's right. Hence, he prayed for allowing the application.

9. As against, Advocate for defendant No. 14A to D submits that the suit property is in their possession. They are running a business in the suit property. He also submits a pursis wherein inter-alia informed the Court that whatever mentioned in say Exh. 83 about the act of non-alienation cannot be treated as undertaking. He lastly submits that the application is devoid of merit and it be rejected.

10. It is worthwhile to mention that the plaintiff has instituted a suit for the specific performance on the basis of *Visarpavati* dated 17/10/2011 which is denied by the defendants. As against, the defendants also claimed Agreement to Sell dated 30/03/2009 which is prior before the *Visarpavati*.

11. I perused xerox copy of *Visarpavati* (Exh. 3/5) wherein it prima-

facie appears that defendant No. 1 with consent of defendant No. 2 and 3 had executed it in favour of the plaintiff for the sale of the suit property for consideration of Rs.1,65,00,000/- in which acknowledged receipt of Rs.20,00,000/- from the plaintiff. It also specified that the suit property was not alienated and not effected any transaction prior to the *Visarpavati*. It was notarized before the Notary Public.

12. Though the *Visarpavati* is denied by the defendants but its existence, legality is not decided by any Court till the date.

13. At the same time, the defendants also relied upon unregistered Agreement to Sell dated 30/03/2009 in favour of defendant No. 11 and the subsequent Sale Deeds in favour of defendant No. 11, 12 13 and 14. The said Agreement and Sale Deeds have been denied by the plaintiff in the suit. Therefore, their legality, proprietary and the genuineness will be decided after full fledged hearing of the case.

14. At the initial stage, the plaintiff's *Visarpavati* (Exh. 3/5) is not determined as illegal or bogus. Rather, the notices issued by Advocate of the plaintiff from time to time to the defendants as well as in daily newspapers prima-facie show their ready and willingness to enforce *Visarpavati* as well as their equitable claim over the suit property on the basis of *Visarpavati*. The said notices are not decided as illegal. However, the act to reply the notices and to issue paper publication reveals a prima-facie claim, right of the plaintiff in the suit property on the basis of *Visarpavati*.

15. No doubt, the suit property was sold to defendant No. 11 by registered Sale Deed dated 30/03/2009. Thereafter, defendant No. 11 also sold some of the portion to defendant No. 12 and 13 by Sale Deed dated

21/02/2014 and 24/02/2014. After that, defendant No. 11 to 13 also sold the suit property to defendant No. 14 on 25/04/2014. Thereafter, the plaintiff has instituted the suit on 30/04/2014.

16. Prima-facie case does not equate to the prima-facie title. It is a case depends upon the existence of circumstances justifying the trial of the questions of fact and law raised in the litigation. It should not be conclude with the title, which has to be established, on evidence at the trial.

17. The plaintiff claiming their equitable right to get relief of specific performance on the basis of *Visarpavati*. On the other hand the defendants are claiming their agreement prior in time and claimed right, title and interest on the basis of number of Sale Deeds. Their legality and proprietary will be determined after full fledged hearing of the case. However, the plaintiff by filing *Visarpavati* (**Exh.3/5**) prima-facie showed triable question of his right to get a relief of specific performance on the basis of *Visarpavati*.

18. The property is transferred from defendant No. 1 to 3 to 11, then defendant No. 11 to 12 and 13 and ultimately to defendant No. 14. Now the legal heirs of defendant No. 14 i.e. 14 A to D are representing the suit property. Their possession over the suit property is not denied. However, 7/12 extract (**Exh. 88/1**) if perused carefully then it appears that name of defendant No. 14D is appeared in the ownership column. Xerox copy of Index II (**Exh. 88/3**) also prima-facie reveals that defendant No. 14 A to C have relinquished their rights of the suit property in favour of defendant No. 14D. It prima-facie seems that number of transactions have been effected in respect of the suit property right from the Sale Deeds to the relinquishment Deed. Therefore, the present status of the suit property will have to be kept

as it is so that the right of the parties will be determined after full fledged hearing of the suit.

19. The Ld. Counsel for the plaintiff submits that he has registered *lis pendens* under Section 52 of Transfer of Property Act, but that is not suffice, as protection of injunction is required to avoid the further complication. He, therefore, relied upon *Prakash Gobindram Ahuja Vs. Ganesh Pandharinath Dhonde (AIR 2017 (NOC) 619 (BOM))*, the Hon'ble Bombay High Court held that -

*'Mere registration of notices of pending suit cannot secure for plaintiffs more than or even equivalent to what an injunction could secure, as the consequences of alienation in breach of interim injunction render such alienation illegal and expose the party to the consequences provided under Order XXXIX, Rules 2A and Rule 11, CPC, in addition to the punishment for contempt of Court. Hence, such registration of notices of pending suit, though desirable as an additional safeguard, cannot be preferable or substituted to clamping an order of injunction on adversary.'*

Having considered the ratio, it appears that if there is a need then mere registration of notice under Section 52 of Transfer of Property Act would not suffice the purpose.

20. After perusal of the entries in the 7/12 extract from year 2011, it appears that suit property is transferred, alienated from time to time and it is in the name of defendant No. 14D by way of Release Deed. It prima-facie

shows the continuous transactions in respect of the suit property after the *Visarpavati*. The plaintiff has prima-facie showed his right to claim specific performance is not decided as illegal, baseless. Rather, his claim on the basis of *Visarpavati* on the suit property is appeared to be legal on the basis of Notarized Document. Therefore, the plaintiff has a prima-facie case on the basis of *Visarpavati* to protect and to keep the nature of suit property as it is so that it cannot be alienated till the decision of suit. He has also prima-facie showed a triable issue to be decided in the present suit. Therefore, after considering the documents produced by the plaintiff, I hold that the plaintiff has a prima-facie case. Therefore, I answer point No. 1 in the affirmative.

**AS TO POINT NO. 2 AND 3 -**

21. These points are interconnected to each other, therefore, they are taken up together for the consideration.

22. The plaintiff has proved his prima-facie equitable rights on the basis of *Visarpavati* in the suit property. He also showed that the suit property is transferred from defendant No. 1 to 3 to defendant No. 11 and thereafter, to defendant No. 12,13 and lastly to defendant No. 14. Defendant No. 14 A to C also relinquished their rights in favour of defendant No. 14D and her name is mutated in the record of rights of the suit property. Even defendant No. 14A to D by filing a pursis intimated that the Exh. 83 cannot be treated as undertaking that defendant will not alienate the same. This act itself an apprehension to the suit property that it will be alienated in future. If the suit property is transferred or alienated or mortgaged then certainly the plaintiff will suffer irreparable loss which cannot be measured in money. On the contrary, if the suit property is kept in defendant No. 14A to 14D's possession then it will not cause any hardship to them.

23. While ascertaining the balance of convenience the party who will suffer greater hardship if the injunction is granted or refused must have to be examined by the Court. Defendant No. 14A to D are prima-facie in possession and occupation of suit property where they run a business. Sale Deeds have been effected from year 2011 to 2014. The plaintiff's right to get a relief of specific performance will be crystallized after full fledged hearing of the case. Therefore, if the property is transferred or alienated before determining the parties rights in the suit property then certainly the plaintiff will suffer greater hardship if the injunction is rejected. Therefore, the balance of convenience definitely lies in favour of the plaintiff.

24. The plaintiff has proved balance of convenience and irreparable loss lies in his favour. Therefore, I answer point No. 2 and 3 in the affirmative.

**AS TO POINT NO. 4 -**

25. The plaintiff has proved his prima-facie case, Balance of convenience lies in his favour. It also appeared that Sale Deeds in respect of the suit property have been registered in favour of defendant No. 11, 12, 13 and 14. Despite of registration of Notice under Section 52 of the Transfer of Property Act, relinquishment Deed was also effected in favour of defendant No. 14D. **Therefore, the temporary injunction will be a last remedy to protect the suit property as relinquishment Deed was effected despite Notice under Section 52 of Transfer of Property Act.**

26. At the time of argument, Advocate for defendant No. 14A to D submits that the suit property is in their possession and they are doing a business in it as well as they let out the property on the license basis. As

defendant No. 14A to D are in occupation of the suit property and they might earn income by giving suit property on leave and license basis. Therefore, if the injunction not to create lease and license is passed then certainly defendant No. 14A to D will suffer irreparable loss. Therefore, to adjust and to achieve equity, while passing an order of temporary injunction, the order will be in the nature of restrain from alienation, transfer and mortgage of the suit property. Hence, the temporary injunction application will have to be allowed partly restraining defendant No. 14 A to D from transfer, alienation and mortgage the suit property. Hence, in answer to point No. 4, I pass following order -

**ORDER**

1. Application (**Exh. 79**) is partly allowed.
2. Defendant No14A to 14D or anybody claiming through them are hereby temporarily restrained from alienating, transferring, mortgaging or exchange the suit property to third party till the disposal of suit.

Pune.  
Date :- 18/12/2025

(Shridhar K. Dhekale )  
5<sup>th</sup> Jt. Civil Judge Senior Division, Pune.

I affirm that the contents of this P.D.F file judgment/Order are same, word to word, as per the original judgment/Order.

|                              |                                                                |
|------------------------------|----------------------------------------------------------------|
| Name of the Stenographer     | Mrs. S.A.Sonawane,                                             |
| Name of the Court            | Mr. Shridhar K.Dhekale,<br>5 <sup>th</sup> Jt. C.J.S.D., Pune. |
| Date of Judgment             | 18/12/2025                                                     |
| Judgment signed by the PO on | 18/12/2025                                                     |
| Judgment uploaded on         | 20/12/2025                                                     |