

ORDER BELOW EXH. 20

01. This is an application by plaintiff for granting status-quo against defendants.

02. The suit is filed for Specific Performance of Contract and alternatively prayed for refund of earnest money. It is the contention of plaintiff that, defendants are owner of suit property. Due to legal necessity, they shown their willingness to sale of the suit property. Plaintiff agreed to purchase the property for amount of Rs. 58,00,000/-. Accordingly, he has paid Rs. 29,00,000/- to defendant No. 1 and Rs. 14,00,000/- to defendant No. 2 vide different mode of payments i.e. cheque, RTGS and cash payment. Accordingly, notarized agreement to sale is executed on 23.03.2022. It was agreed to pay the remaining amount of Rs. 15,00,000/- on the date of sale deed. Plaintiff repeatedly requested defendants to execute the sale deed, however, they denied for same. Hence, plaintiff constrained to file this suit.

03. It is further contention that, suit is filed on 19.12.2022. Defendants appeared but failed to file their written statement. Defendants are intending to create third party interest. Further, they are obstructing possession of plaintiff. Hence, prayed for granting status-quo against them.

04. Defendants strongly objected the application by filing their say. It is their contention that, the application is false. The suit is not maintainable as per provisions of Indian Registration Act, Transfer of Property Act and Specific Relief Act. Plaintiff is not entitled to relief mentioned in suit. Therefore, no question of temporary injunction or status-quo arise. Plaintiff has not come with clean hand. Hence, prayed for rejecting the application.

05. Heard both. Perused record of suit. The very important aspect raised by plaintiff is that, he has paid earnest amount of Rs. 6,00,000/- vide RTGS and Rs. 23,00,000/- in cash i.e. total amount of Rs. 29,00,000/- to defendant No. 1. Further, he has paid amount of Rs. 9,00,000/- vide RTGS, Rs. 3,00,000/- in cash and Rs. 2,00,000/- vide cheque i.e. total amount of Rs.

14,00,000/- to defendant No. 2. As per description given in plaint, plaintiff paid total amount of Rs. 43,00,000/- to defendants. Further, they executed notarized agreement to sale on 23.03.2022 and on said date, defendants handed over possession of suit property to plaintiff.

06. Notarized agreement deed is produced on record below Exh. 4/2. Plaintiff as per his sweet choice impounded said document by paying stamp duty on it. Agreement to sale with stamp is produced below Exh. 4/3. To prove his possession, at this stage plaintiff is relying on the agreement to sale. Plaintiff has issued notice to defendants, defendants have also issued notice to plaintiff. The office copy of all these notices are produced by plaintiff himself with list Exh. 4. Basically, plaintiff is claiming that, he has paid amount of Rs. 43,00,000/- as earnest amount. However, except bare words of plaintiff, there is not a single document produced on record by him to show that, he has paid amount of Rs. 43,00,000/- to defendants. Moreover, the office copies of notices produced on record shows that, there is criminal case filed against plaintiff alleging that, he has issued cheque in the name of his deceased mother.

07. At this stage, without going into the merit or demerit of the case, nothing has come on record to show that, plaintiff has given earnest amount of Rs. 43,00,000/- which is received by defendants. Further, suit is filed on 19.12.2022. Defendants appeared on 12.01.2023. Adjournment for filing written statement is granted vide proviso of Order VIII Rule 1 of the Code of Civil Procedure. Since filing of suit till today, nothing is brought on record by plaintiff to show that, suit property is under threat or in danger of alienation. Learned advocate for plaintiff argued that, defendants are purposely making delay to file their say and written statement. Hence, prayed for granting status-quo of suit property. On the other hand, learned advocate for defendants argued that, the agreement to sale is not registered deed, therefore, the suit itself is not tenable. Hence, prayed for rejecting the application.

08. Admittedly, agreement to sale is executed on notarized document dated 23.03.2022. After that, plaintiff as per his will and wish and for his convenience paid insufficient stamp fee on 22.11.2022. In such situation, it cannot be said that, the document was registered on 23.03.2022. Further, plaintiff is having protection under Section 52 of the Transfer of Property Act. Defendants have not filed written statement within stipulated time is not good ground for granting status-quo. Granting status-quo is as good as granting temporary injunction. Therefore, it is for the plaintiff to make a strong prima-facie case. As discussed in earlier paras, except notarized deed, nothing has come on record to show that, plaintiff is in possession of suit property and defendants are disturbing his peaceful possession by creating third party interest. Therefore, application deserves to be reject. Hence, following order :-

ORDER

The application is rejected.

02. Parties to bear their own costs.

Date : 09.03.2023

(**Sampurna K. Karande**),
Civil Judge, Senior Division,
Barshi.

4 Sp.C.S. No. 440/2022.
Sachin Vs. Satish & Anr.
CNR No. MHSO12-001742-2022.

CERTIFICATE

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer	: S. N. Chilka
Court	: Civil Court Senior Division, Barshi.
Judgment / Order signed by the P. O. on	: 09.03.2023
Judgment / Order uploaded on	: 13.03.2023