

ORDER BELOW EXH. 5

The plaintiff has filed this application for grant of temporary injunction to temporarily restrain the defendants from selling the suit properties. He has submitted that, the plaint be considered as part and parcel of this application. Hence, it is also necessary to go through the averments in the plaint.

02. On going through the application and the plaint, it appears that, in brief, it is the case of plaintiff that, defendant Nos. 1 and 2 owned and possessed the suit properties described in para 1 A and 1B of the plaint. The said properties were their ancestral properties. They agreed to sell him the suit property described in para 1A of the plaint for a consideration of Rs. 25,00,000/-. In view of said agreement, defendant Nos. 1 and 2 also executed an agreement dated 16.11.2019 before the notary public. Towards said agreement, he paid Rs. 19,00,000/- in cash and issued two cheques of HDFC Bank, Branch Barshi each for Rs. 2,50,000/- to each of defendant Nos. 1 and 2. As per the said agreement dated 16.11.2019, remaining amount of Rs. 1,00,000/- was to be paid and the sale deed was to be executed at his expenses by 09.12.2020.

03. It is further the case of the plaintiff that, thereafter, defendant Nos. 1 and 2 again agreed to sell him the suit property described in para 1B of the plaint for a consideration of Rs. 21,00,000/-. in view of said agreement, defendant Nos. 1 and 2 also executed an agreement to sell dated 23.01.2020 before notary public. Towards said agreement to sell, he also paid Rs. 19,50,000/- in cash to defendant Nos. 1 and 2. As per the said agreement remaining amount of Rs. 1,50,000/- was to be

paid and the sale deed was to be executed at his expenses by 22.12.2020.

04. It is further the case of the plaintiff that, since the beginning, he has been ready and willing to perform his part of contract, but defendant Nos. 1 and 2 are avoiding to perform their part of their contract. For performance of agreement to sell deed dated 16.11.2019, he also issued notice to defendant Nos. 1 and 2 through Shri. Kuldeep Sanjay Kshirsagar Advocate on 16.10.2020. So also, for the performance of agreement to sell dated 23.01.2020, he again issued notice to defendant Nos. 1 and 2 through said Advocate on 10.08.2021. Defendant Nos. 1 and 2 received both the notices, but failed to perform their part of contract. As against this, on 01.09.2021 defendant Nos. 1 and 2 issued him reply through Smt. R. D. Tarake Advocate. He received the said reply on 04.09.2021. As per the reply to his notice, defendant Nos. 1 and 2 admitted execution of above noted agreement to sell dated 16.11.2019 and receipt of Rs. 19,00,000/- towards said agreement. However, they also informed him that, they sold the suit property described in para 1A of the plaint to defendant No. 3 for a consideration of Rs. 9,10,000/-. So also, in the reply, they admitted the execution of above noted agreement to sell dated 23.01.2020. However, they falsely alleged that, the said agreement dated 23.01.2020 was executed as a security towards payment of remaining amount of the above noted agreement to sell dated 16.11.2019.

05. It is further case of the plaintiff that, after receipt of said reply dated 01.09.2021 of defendant Nos. 1 and 2, he inquired in the Office of Registrar. Thereafter, he came to know that, defendant Nos. 1 and 2 vide sale deed dated 21.12.2019 sold the suit property described

in para 1A of the plaint to defendant No. 3. So also, he came to know that, vide sale deed dated 17.11.2020, defendant Nos. 1 and 2 sold the suit property described in para 1B of the plaint to defendant No. 4 for a consideration of Rs. 25,60,000/- and thereafter, again defendant No. 4 vide sale deed dated 02.07.2021 sold it to defendant Nos. 5 and 6 for a consideration of Rs. 25,60,000/-. Defendant Nos. 1 and 2 concealed all the information from him. Further, defendant nos. 5 and 6 are also planning to sell the suit property. In the circumstances, he is constrained to file this suit and this application. He has submitted that, balance of convenience lies in his favour. If the defendants transfer the suit properties, he would suffer irreparable loss. With such submissions, he has prayed to allow the application.

06. Defendant Nos. 1 to 4 have failed to file their reply to this application. Hence, I am proceeding without their reply. Defendant Nos. 5 and 6 have contested the suit by filing their written statement vide Exh. 45. So also, they have filed Pursis vide Exh. 48 and 51 stating that, their written statement be considered as their reply to this application. As such, it is necessary to go through their written statement at Exh. 45.

07. On going through the written statement of defendant Nos. 5 and 6 it appears that, they have denied all the adverse allegations made by the plaintiff. In sum and substance, they have submitted that, vide sale deed dated 02.07.2021, they purchased the suit property described in para 5A of their written statement from defendant No. 4 for a consideration of Rs. 25,60,000/-. Defendant No. 4 had purchased the said property from defendant Nos. 1 and 2 on 17.11.2020. So also, vide sale deed dated 24.08.2021, defendant No. 5 purchased the suit

property described in para 5B of their written statement from defendant No. 3 for a consideration of Rs. 35,00,000/-. Prior to above noted sale transactions, public notice was also published in the newspaper through Shri. Prashant P. Edke Advocate, but nobody raised any objection within 7 days. Hence, they entered into said transactions. In this way, they are bonafide purchasers for value without notice.

08. It is further the case of defendant Nos. 5 and 6 that, they have been in possession of the suit property described in para 1A of the plaint as of owners thereof. Defendant No. 5 has been in possession of the suit property described in para 1B of the plaint as of owner thereof. Their names have been also mutated in the Government record. With such submissions, they have prayed to reject the application.

09. Following points arise for my determination and my findings with reasons thereon are as follows :-

<u>Points</u>	<u>Findings</u>
1 Whether the plaintiff has made out <i>prima facie</i> case ?	...In the affirmative.
2 Whether balance of convenience lies in favour of the plaintiff ?	...In the affirmative.
3 Whether the plaintiff will suffer irreparable loss, if the temporary injunction is not granted in his favour?	...In the affirmative.
4 What order ?	As per final order.

REASONS

As to point No. 1 :-

10. I have heard arguments of learned Advocates for the plaintiff and defendant Nos. 1 to 3 and 5 and 6. So also, I have perused the

record of the case. As referred to above, as per the plaintiff, defendant Nos. 1 and 2 owned and possessed the suit properties described in para 1A and 1B of the plaint. The said properties were their ancestral properties. As per agreement to sell dated 16.11.2019, they agreed to sell him the suit property described in para 1A of the plaint for a consideration of Rs. 25,00,000/-. Towards said agreement, he paid Rs. 19,00,000/- in cash and also issued two cheques of HDFC Bank, Branch Barshi each for Rs. 2,50,000/- to each of defendant Nos. 1 and 2. Remaining amount of Rs. 1,00,000/- was to be paid and the sale deed was to be executed by 09.12.2020.

11. Also as referred to above, as per the plaintiff, defendant Nos. 1 and 2 as per agreement to sell dated 23.01.2020 agreed to sell him the suit property described in para 1B of the plaint for a consideration of Rs. 21,00,000/-. Towards said agreement, he paid Rs. 19,50,000/- in cash and remaining amount of Rs. 1,50,000/- was to be paid and the sale deed was to be executed by 22.12.2020. In support of his submissions, the plaintiff has also relied on following documents:-

Sr. No.	Documents
1	Agreement to sell dated 16.11.2019.
2	Agreement to sell dated 23.01.2020.
3	Office copy of notice dated 10.08.2021 issued by the plaintiff to defendant Nos. 1 and 2.
4	Three acknowledgement receipts issued by the post office.
5	Two postal receipts.
6	Reply dated 01.09.2021 issued by defendant Nos. 1 and 2 through Smt. R. D. Tarake Advocate to the plaintiff.

7	Copy of sale deed dated 21.12.2019 executed by defendant Nos. 1 and 2 in favour of defendant No. 3
8	Certified copy of sale deed dated 02.07.2021 executed by defendant No. 4 in favour of defendant Nos. 5 and 6.
9	Copy of Index II in respect of sale deed executed by defendant Nos. 1 and 2 in favour of defendant No. 4 on 17.11.2020.

12. As against this, as referred to above, as per defendant Nos. 5 and 6, vide registered sale deed dated 02.07.2021 they purchased the suit property described in para 5A of their written statement from defendant No. 4 for a consideration of Rs. 25,60,000/-. Defendant No. 4 had earlier purchased it from defendant Nos. 1 and 2 on 17.11.2020. Also, vide registered sale deed dated 24.08.2021 defendant No. 5 purchased the suit property described in para 5B of their written statement from defendant No. 3 for a consideration of Rs. 35,00,000/-. Prior to execution of above noted both the sale deeds, they had published a public notice in the newspaper, but nobody raised objection within 7 days. Therefore, they entered into the said transactions of sale. Hence, they are bonafide purchasers for value without notice.

13. In this way, on going through the pleadings and documents on record, prima facie, it appears that, defendant Nos. 1 and 2 owned and possessed the suit properties described in para 1A and para 1B of the plaint. Further, on going through the above noted agreement to sell dated 16.11.2019, it appears that, defendant Nos. 1 and 2 agreed to sell the suit property described in para 1A of the plaint to the plaintiff for a consideration of Rs. 25,00,000/- and they received Rs. 19,00,000/- and two cheques of Rs. 2,50,000/- from the plaintiff.

14. Further, on going through the above noted agreement to sell

dated 23.01.2020, prima facie, it appears that, defendant Nos. 1 and 2 agreed to sell the suit property described in para 1B of the plaint to the plaintiff for a consideration of Rs. 21,00,000/- and they also received Rs. 19,50,000/- from the plaintiff.

15. I mention here that, in the above noted reply dated 01.09.2021, both defendant Nos. 1 and 2 who are original owners of the suit properties have also admitted the execution of said agreement to sell dated 16.11.2019 and receipt of Rs. 19,00,000/-. Also, they have admitted the execution of said agreement to sell dated 23.01.2020. But it is their case that said agreement to sell dated 16.11.2019 was cancelled later on and they repaid Rs. 9,10,000/- to the plaintiff. Only amount of Rs. 11,00,000/- was remained to be paid to the plaintiff. As a security for the said amount, upon the say of the plaintiff they executed another agreement to sell dated 23.01.2020. Be that as it may, from their said statement it can be said that they have also admitted the execution of said agreements to sell dated 16.11.2019 and 23.01.2020.

16. More so, in this case, defendant Nos. 1 and 2 have filed their written statement at Exh. 41 and therein they have submitted that they were in need of finance. They came to know that, the plaintiff engaged in money lending business. Therefore, they approached him and availed loan of Rs. 6,00,000/- from him on 19.06.2019. Towards said loan, upon the say of the plaintiff, from time to time they executed in all three agreements dated 19.06.2019, 16.11.2019 and 23.01.2020 as a security. Be that as it may, from this said statement it can be also said that in their written statement they have again admitted the execution of above noted agreements to sell dated 16.11.2019 and 23.01.2020. Whether they cancelled said agreement to sell dated 16.11.2019, whether in lieu

of security for payment of remaining amount Rs. 11,00,000/- they executed said agreement to sell dated 23.01.2020 and whether as a security for payment of loan from time to time they executed agreements to sell dated 19.06.2019, 16.11.2019 and 23.01.2020 cannot be decided at this stage. The said facts can be decided only after full fledged trial.

17. Further, on going through the above noted copy of sale deed dated 21.12.2019, certified copy of sale deed dated 02.07.2021, copy of Index II pertaining to sale deed dated 17.11.2020, reply notice of defendant Nos. 1 and 2 and their written statement and written statement of defendant Nos. 5 and 6 prima facie it appears that after the execution of above noted agreements to sell dated 16.11.2019 and 23.01.2020 in favour of the plaintiff, defendant Nos. 1 and 2 sold the suit properties. In this way, prima facie, it appears that, the agreements to sell dated 16.11.2019 and 23.01.2020 are earliest at the point of time than the transactions of sale relating to the suit properties described in para 1A and 1B of the plaint in favour of defendant Nos. 3 to 6. Therefore, in view of provisions of Section 48 of the Transfer of Property Act, prima facie, it appears that the plaintiff has legal right in the suit properties described in para 1A and 1B of the plaint. Therefore, in my considered opinion, serious disputed question as to legal rights of the plaintiff vis-a-vis legal rights of defendant Nos. 5 and 6 is to be tried in the suit and there appears probability in favour of the plaintiff. Hence, I am of the considered opinion that, the plaintiff has made out prima facie case. Hence, I answer point No. 1 in the affirmative.

As to point No. 2 :-

18. As referred to above, prima facie it appears that defendant Nos. 1 and 2 vide agreements to sell dated 16.11.2019 and 23.01.2020 agreed to sell the suit properties to the plaintiff and thereafter they entered into transactions of sale. In this view of the matter, the said agreements to sell dated 16.11.2019 and 23.01.2020 are earliest at the point of the time then the transactions of sale in favour of defendant Nos. 3 to 6. In this view of the matter, prima facie it appears that the plaintiff has legal right in the suit properties. Further, prima facie above noted agreements to sell dated 16.11.2019 and 23.01.2020 show that, the plaintiff has also made huge payment towards said agreements to defendant Nos. 1 and 2. In this view of the matter, in my considered opinion, balance of convenience also lies in favour of the plaintiff. Hence, I answer point No. 2 in the affirmative.

As to point No. 3 :-

19. As referred to above prima facie, it appears that, in spite of execution of above noted agreements to sell dated 16.11.2019 and 23.01.2020 in favour of the plaintiff, defendant Nos. 1 and 2 sold the suit properties described in para 1A and 1B of the plaint to defendant Nos. 3 and 4 and who in turn sold the same to defendant Nos. 5 and 6. Therefore, prima facie, it appears that the plaintiff has legal rights in the suit properties. The plaintiff has submitted that, defendant Nos. 5 and 6 are also planning to sell the suit properties. If they would again sale the suit properties to any other person, naturally great irreparable loss will be caused to him. In this view of the matter, I am of opinion that, if the temporary injunction is not granted, great irreparable loss will be

caused to the plaintiff. Hence, I answer point No. 3 in the affirmative.

As to point No. 4 :-

20. As referred to above, the plaintiff has made out prima facie case, balance of convenience also lies in his favour and if temporary injunction is not granted in his favour, great irreparable loss will be caused to him. This being the position, I mention here that, temporary injunction cannot be issued against all the defendants because now, the suit property described in para 1A of the plaint is transferred to defendant Nos. 5 and 6 and the suit property described in para 1B of the plaint is transferred to defendant No. 5.

21. At this juncture, I mention here that, in support of his submission, learned Advocate for defendant Nos. 5 and 6 has relied on the judgment of Hon'ble Bombay High Court in the case of **Pralhad Jaganath Jawale v. Sitabai Chander Nikam** [(2011) 4 Mah LJ 137]. In the said judgment in para 28, the Hon'ble Bombay High Court has observed as follows:-

“28. The conclusion drawn from the aforesaid discussion are:

(i) as far as right of impleadment of transferee pendente lite is concerned, what will bind this Court is what is held by the Apex Court in the case of Amit Kumar Shaw (supra);

(ii) in view of the binding precedents of the Apex Court, the observation in clause (c) of paragraph No. 30 that the provision of Rule 1 of Order XXXIX could be invoked only if protection provided by section 52 is shown to be inadequate cannot bind this Court. Even the observation in first part of clause (a) of paragraph No. 30 that section 52 provides

adequate protection to the parties from transfers pendent lite cannot be read as a binding precedent. In any event, in view of the law laid down by the Apex Court, it cannot be said that provisions of section 52 of the said Act of 1882 in any manner put fetters on the powers of Civil Court conferred by Rules 1 and 2 of Order XXXIX of the said Code. As stated earlier, in a given case, while exercising discretionary powers, the Court can always come to the conclusion in peculiar facts of the given case, that in view of provisions of section 52 of the said Act of 1882, equitable relief of temporary injunction need not be granted.”

22. In this way, on going through the aforesaid judgment of Hon’ble Bombay High Court, it appears that, it cannot be said that provisions of section 52 of the Transfer of Property Act of 1882 in any manner put fetters on the powers of Civil Court conferred by Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure. While exercising discretionary powers, the Court can always come to the conclusion in peculiar facts of the given case, that in view of provisions of section 52 of the said Act of 1882, equitable relief of temporary injunction need not be granted. In the case on hand considering the facts and circumstances, it is necessary to grant temporary injunction. I further mention here that in the case of **Harish Bulchand Tejwani v. Nandlal Hakikatrai Motwani** [(2015) 6 Mah LJ 597] the Hon’ble Bombay High Court has observed as follows :-

“...Merely because section 52 of the Transfer of Property Act is existing and operative, it does not mean that the plaintiff is not entitled to pray for and get interim injunction when there is clear prima facie case in favour of the respondent/plaintiff to protect the suit property pending disposal of the suit. The discretionary relief

12 Sp.C.S. No. 286/2021.
Bhairav Vs. Vikas and Ors.

of interim injunction is granted on the basis of prima facie case, balance of convenience, and consideration of irreparable loss with a view to protect the suit property as it is and not to allow creation of irreversible situation whereby legal and valid claim of the plaintiff is likely to be defeated by transfer/alienation of the suit property by the defendant in the case. Dishonesty of litigant intending to defeat the probable decree, can be prevented by appropriate interim order, when necessary in the facts and circumstances of the case.”

In the light of above, it is just and proper to grant temporary injunction against defendant Nos. 5 and 6 to temporarily restrain them from selling the suit properties described in Para 1A and 1B of the plaint to any other person till the decision of this suit. In the result, I pass following order :-

ORDER

Defendant Nos. 5 and 6 are hereby temporarily restrained from selling the suit properties described in para 1A and 1B of the plaint to any other person till the decision of this suit vide Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

02. Costs of this application shall be the cost in this suit.

Date : 15.07.2023

(Ankush P. Khanorkar),
Civil Judge, Senior Division, Barshi.

13 Sp.C.S. No. 286/2021.
Bhairav Vs. Vikas and Ors.

C E R T I F I C A T E

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

Name of the Stenographer : Shripad N. Chilka
Name of the Court : Civil Judge Sr. Division, Barshi.
Judgment / order signed by the : 15.07.2023
Presiding Officer on
Judgment / Order uploaded on : 18.07.2023