

**ORDER BELOW EXH.5 IN R.C.S No. 243/2021**  
**(CNR NO.MHSO130003002021)**

This is an application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity and convenience) for temporary injunction. An open place bearing Grampanchayat House No.251 admeasuring 2000 sq.ft. i.e. 185.87 sq.mtrs. situated at village Balewadi taluka Barshi. (hereinafter called as 'suit property' for the sake of brevity and convenience).

**The brief facts of plaintiff's case are as follows:-**

2. The suit property was owned and possessed by plaintiff. Her name was on the form no.8 in the grampanchayat record. For solving her family's financial problems, she kept the suit property out for sale and husband of defendant no.1 and father of defendants no.2 and 3 namely Pandit @ Chaturbhuj Ambadas Patil came to know of it and he met the plaintiff and informed his readiness to purchase the suit property. After meeting between plaintiff and Pandit Patil, the price of the suit property for purchase was fixed at Rs.2,60,000/-. The government value of the suit property was Rs.1,78,435/- and Pandit Patil had told the plaintiff to enter into sale deed of Rs.1,80,000/- for payment of stamp duty of the sale deed. Hence, the sale deed was entered by showing the price of Rs.1,80,000/- on 12/02/2018. The sale deed was registered at Sub-Registrar Barshi having sale deed number 681/2018. For the remaining amount, it was decided that, an agreement between Pandit Patil and plaintiff would be entered and it was therefore entered on 12/02/2018. The agreement was notarized with number 0140/2018 in the presence of two witnesses. As per the agreement, an amount of Rs. 50,000/- cash and an amount of Rs. 30,000/- by cheque number 055703 of Shivshakti Urban Bank Ltd. were given on 11/04/2018. The consideration amount of Rs.1,80,000/- in the sale deed was given by Pandit Patil to the plaintiff through cheque number 055702 of Shivshakti Urban Bank Ltd. on 11/04/2018. Pandit Patil gave assurances to plaintiff that both cheques would be honored on the mentioned dates and therefore,

plaintiff accepted those cheques. It was decided that, if the cheques are dishonored then, the transaction of sale deed between plaintiff and Pandit Patil would be considered as canceled.

3. Plaintiff further submits that, both cheques were dishonored due to the reason funds insufficient. When plaintiff went to enquire at defendants' house, she was told by defendants that Pandit Patil died on 07/04/2018. Plaintiff told defendants about the dishonored cheques and transaction and defendants told her that they would pay the amount of cheques to her within one month. Plaintiff thereafter requested the defendants on 25/05/2018, however, defendants abused the plaintiff and scolded her. Plaintiff filed complaint application on 09/04/2018 before Gramsevak, Grampanchayat Balewadi and she was informed by Gramsevak that name of Pandit @ Chaturbhuj Patil is entered on the revenue record of Grampanchayat. When plaintiff took out the extract of the suit property on 09/04/2018, she came to know that, Pandit Patil has sold the suit property to defendants no.4 and 5. After obtaining the copy of sale deed on 12/04/2018, plaintiff came to know that Pandit Patil has sold the suit property to defendants no.4 and 5 on 12/03/2018 by sale deed number 1156/2018. The sale deed number 1156/2018 is not binding on the plaintiff because Pandit Patil had no right to sell the suit property to defendants no.4 and 5, as the cheques given by Pandit Patil to the plaintiff were dishonored. As the cheques are dishonored, the sale deed dated 12/02/2018 has become pointless and non-executable. As a result of it, Pandit Patil got no ownership right over the suit property. Hence, the sale deed number 1156/2018 has also become pointless and non-executable. Defendants no.4 and 5 are in preparation to create third party interest. The final adjudication of the suit will take time. Plaintiff will suffer irreparable loss if third party interest is created in the suit property. Plaintiff has a prima facie case. She has a balance of convenience. Hence, plaintiff has prayed to restrain the defendants no.4 and 5 from creating a third party interest in any manner in the suit property till disposal of the suit.

4. As per record, defendants no.4 and 5 failed to file say and written statement within limitation. Hence, the suit proceeded without their say.

5. Heard learned Advocate for plaintiff. Perused the record and proceeding of the case. The points for determination along with findings and reasons thereon are as under:

Sr.No	Points	Findings
1.	Whether the plaintiff has a prima facie case?	Yes
2.	Whether the balance of convenience lies in favor of plaintiff ?	Yes
3.	Whether plaintiff will suffer irreparable loss if injunction is refused?	Yes
4.	What order?	As per final order.

### REASONS

#### POINT NO.1 TO 4:

6. In order to prove her prima-facie case, plaintiff has relied upon the copy of Index-II having number 708/2015, copy of Index-II having number 681/2018, copy of Index-II having number 1156/2018, copy of cheque number 055702, copy of bank memo, copy of cheque number 055703, copy of bank memo, copy of notice sent by plaintiff, copy of notice reply by defendants no.1 to 3, copy of notice reply defendants no.4 and 5, copy of suit property extract and copy of agreement vide list of documents at Exh.3.

7. The suit is filed for declaration, cancellation of sale deed, possession and for perpetual injunction. Relief of not to alienate the suit property till final disposal of the suit is sought in the present application. Through the present application, plaintiff has prayed to restrain the defendants no.4 and 5 from alienating the suit property. A prima facie case should be such that it should appear on record that there is bona fide contest between the parties. In order to grant temporary injunction, regard shall always be had to the principle of probability of success and a bonafide case.

Probability of success will depend upon the material on record and a bona fide case will depend upon principles of equity. In order to decide a prima-facie case, the material placed before the Court need to be taken into consideration as well as it is important to peruse the facts and circumstances involved in a particular case.

8. In order to ascertain whether plaintiff has a prima facie case, the documentary material filed by plaintiff need to be perused. The copy of Index – II filed at Exh.3/1 and Exh.3/2 prima facie appears to show that, suit property was purchased by plaintiff from one Shafiq Latif Chaudhari and thereafter, it was sold by plaintiff to Chaturbhuj Ambadas Patil. Thereafter, the copy of Index-II at Exh.3/3 prima facie indicates that, Chaturbhuj Ambadas Patil sold suit property to Ismail Jalaluddin Saudagar who is defendant no.4, on 12/03/2018 which is exactly after one month when plaintiff got the sale deed registered of the suit property in favor of Chaturbhuj Ambadas Patil. These documents prima facie appears to support the averments of plaintiff in the plaint. The copies of cheques number 055702 and 055703 and their return memos filed from Exh.3/5 to Exh.3/8, prima facie support the averment of plaintiff that, those cheques were dishonored and the consideration amount in those cheques is unpaid. Moreover, the copy of notary agreement dated 12/02/2018 at Exh.4/12 prima facie supports the averments of plaintiff. The 7/12<sup>th</sup> extract of Gat no.64/1 at Exh.4/1 prima facie appears to mention the name of defendant no.1 which is dated 15/12/2020. On the other hand, defendant no.4 and 5, have not filed say on the present application and the suit is proceeded without their written statement as the defendants no.4 and 5 failed to file written statement within the prescribed period. However, plaintiff has to prove that prima case lies in her favor. Considering the documentary material adduced by plaintiff at this juncture, it appears that, plaintiff has a legal right existing in her favor. Plaintiff is seeking to restrain defendants no.4 and 5 from creating a third-party interest in the suit property. The documents on record in the light of averments of plaintiff, prima facie appears to indicate at this juncture that,

third party interest was created by Chaturbhuj Patil in favor of defendants no.4 and 5 despite the non-payment of due consideration amount to the plaintiff in regard to the purchase of suit property. Whether the sale deed are liable to canceled, whether plaintiff is entitled to declaration, possession and perpetual injunction or not are questions of trial. The documents on record at this stage, shows that legal right exists in favor of plaintiff and that she has a prima facie case for obtaining temporary injunction.

9. In order to decide, who has the balance of convenience, the Court has to decide who will suffer great hardship or mischief in case injunction is not granted. Prima facie case and balance of convenience lies in favor of plaintiff as the plaintiff has prima facie proved her case. The creation of third-party interest in suit property would cause hardship to the plaintiff and it might lead to cause inconvenience to the plaintiff and would result in complexity in litigations. The comparative hardship would be caused to the plaintiff. On the other hand, no such hardship would be cause to the defendant.

10. In such position, no irreparable loss would be caused to either side if the present application is allowed. However, further creation of third-party interest in suit property while the suit is pending, might cause irreparable loss to the plaintiff. It is also important to consider that, prima facie, Chaturbhuj Patil had created third party interest in favor of defendants no.4 and 5 despite non-payment of consideration amount by him to the plaintiff. Rejecting this application might cause irreparable loss to the plaintiff because prima facie she is left with non-payment of consideration amount and the suit property is sold to defendant no.4 and 5 as well. On the other hand, allowing this application, would not cause irreparable loss to the defendants no.4 and 5 because it is admitted position that suit property is sold to them and whether the concerned sale deed is liable to be canceled or not would not be decided at this juncture because, this application is only for temporary injunction and the present position of defendants no.4 and 5 would not be

affected at this juncture. Hence, considering the aforesaid reasons, the prima facie case lies with the plaintiff and the balance of convenience is in favor of plaintiff and rejecting this application would cause irreparable loss to the plaintiff rather than the defendants no.4 and 5. Hence, I answer point no.1 to 3 in affirmative.

11. In view of above reasons and findings, plaintiffs are entitled to temporary injunction. Hence, in response to point no.4, I pass the following order:

**ORDER**

1. The application is allowed.
2. Defendants no.4 and 5 are hereby restrained by an order of interim injunction from creating third party interest in the suit property in any manner till final disposal of suit.
3. Costs in cause of the suit.

(Pronounced in open Court)

Place: Barshi  
Date: 04/11/2022

(N. S. Sabnis)  
4<sup>th</sup> Jt. Civil Judge Junior Division,  
Barshi.

**CERTIFICATE**

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

(a)	Name of the Stenographer	:	Y. V. Sital
(b)	Court	:	Shri. N.S.Sabnis 4 <sup>th</sup> Jt. Civil Judge, J.D.& J.M.F.C.Barshi
(c)	Judgment /Order signed by P.O. on	:	04/11/2022
(d)	Judgment /Order uploaded on	:	05/11/2022