

**Sp. C. S. No. 34/2014**

Ogale glass works Ltd. ----- Plaintiff  
Vs.  
Vitthal Govind Kolhatkar & ors. ----- Defendants

**Order Below Exh. 109**

1. The plaintiff has filed this application under Order 39 Rule 1 and 2 of Civil Procedure Code against defendant Nos. 1, 2, 7, 9, 12, 14, 16 to 19 and 23 for temporarily restraining them from making construction and thereby from changing the nature of the suit property.

2. The defendant have filed say at Exh. 111 and they have strongly opposed application.

3. Heard both sides. Advocate for the plaintiff submitted that the plaintiff has filed this suit for declaration that the sale deed of defendant Nos. 1 to 23 dt. 24/10/2002 is void ab initio. Now, defendant Nos. 9 and 19 have started construction in the suit property. If they continued the construction then the other defendants will also make the construction and thereby nature of the suit property will be changed. This will cause irreparable loss to the plaintiff company. Advocate for the defendants submitted that the prayer in this application does not appear in the main suit hence, it cannot be granted. The defendants have not done construction. The defendants are owner of the suit property as per Court order. The plaintiff has no prima-facie case hence, application is liable for rejection.

4. From the contentions in the applications, say and the arguments following points arise for determination along with their

findings.

<b>Sr. No.</b>	<b>POINTS</b>	<b>ANSWERS</b>
1	Does the plaintiff prove prima facie case in his favour?	No
2	Is the balance of convenience in favour of the plaintiff ?	No
3	Does the plaintiff prove that he will suffer irreparable loss if temporary injunction is not granted in his favour ?	No
4	What Order ?	<b>As per final order application is rejected.</b>

## **REASONS**

### **As to Points No. 1 to 3 :-**

5. These points are interconnected with each other, so, I discuss them together.

6. The first contention of defendants is that the prayer in the application is not in the main suit and so the application cannot be allowed. If the order 39 Rule 1 and 2 of C. P. C. is read then it is clear that the temporary injunction may be granted if it is proved on affidavit or otherwise that any property in dispute in a suit is in danger or being wasted, damaged or alienated by any party to the suit. Therefore, when the plaintiff has fear that the property is being wasted, damaged he can file such application. Hence, the present application filed by plaintiff is proper.

7. Second contention of the defendants is that they have got title by Court order and so plaintiff cannot claim injunction against owners. In the plaint para No. 13 and 14 the plaintiff has stated the illegalities committed by the defendants in view to get the sale deed executed in their favour. Thus, the execution of the sale deed is challenged by the plaintiff. The disputed sale deed is produced with list Exh. 3/43. Copy of the order dt. 14/10/2002 passed on Exh. 92 in R. D. No. 16/2000 is produced on record with list Exh. 3/16. On reading the order it appears that the order of the Court was to enter in execution of private sale preferably with 67 laborers who are actually residing in the tenements on the land City Survey No. 74 and 72/3. In view of the order the contention of the plaintiff is that the defendants are not employee or laborers of plaintiff company. Therefore, the defendants have no right of getting sale deed executed in their favour.

8. In the sale deed the property is shown as open space. The map of suit property is given on the page No. 5212/51 of the sale deed. According to plaintiff no specific area, location of the purchased property is shown of each defendant. The plaintiff has challenged the sale deed, illegalities if any, committed by the defendants can be seen on the basis of the evidence recorded at the time of trial. At this stage the sale deed is not set aside. The sale deed was executed by order of the Court. Though no specific area is shown in name of each defendant they are owner of the suit premises. So, at this stage the plaintiff cannot seek injunction against defendants. The plaintiff has no prima-facie case, balance of convenience is not in his favour. If the temporary

injunction is not granted then plaintiff will have no loss. On the contrary the defendants will suffer irreparable loss if the temporary injunction is granted. Hence, I answer these points in **negative**.

**As to point No. 4 :-**

9. In view of the answer to point Nos. 1 to 3 the application is liable for rejection. In the result, I pass the following order.

**ORDER**

1. Application Exh. 109 stands rejected.
2. Cost in main cause.

(Dictated and pronounced in open court)

Dt. 11/11/2016  
Karad.

**(P. A. Savadikar)**  
Civil Court Sr. Dn. Karad.

Ganesh D. Jadhav,  
Stenographer (L.G.)