

SPL. C.S. No. 128/2022
Ramchandra & Ors. Vs. Ganesh Ors.

ORDER BELOW EXH.5
(CNR No.:MHST180006222022)

Plaintiffs/applicants filed this application under Order XXXIX, rule 1 and 2 of the Code of Civil Procedure for granting temporary injunction against defendants.

2. I read an application and reply/written statement of defendant no. 2 to 5 at Exh. 39. This suit is proceeded ex-parte against defendant no. 1 vide order below Exh. 1 dated 31.03.2023.

3. Perused the entire record. Heard the learned counsel for the plaintiffs Adv. Shri. V.V. Methawde. Plaintiff no. 1 and 2 are present in the Court. However, the defendant no. 1 to 5 and their learned counsel Adv. Shri. R.S. Powar are absent when called.

4. It is the contention of plaintiffs that, defendants are owner and possessor of the agricultural land i.e. bearing survey no. 273/7, admeasuring 3.82 H.R. which are situated at-Dahiwadi, Tal-Man, Dist-Satara. (This is hereinafter referred as the suit property).

It is further contention of plaintiffs that, suit property is the ancestral property of defendants. On 01.09.1999, the father of defendants namely Prakash Mahadev Chavan died. Thereafter, the name of defendants were recorded in the revenue record of the suit property bearing mutation no. 31020. Then, the defendant no. 1,

with the consent of other legal heirs, was intending to sale the suit property. Plaintiffs were ready to purchase the suit property from defendants. Accordingly, the defendant no. 1 agreed to sale the suit property to plaintiffs for the total consideration amount of Rs.8,00,000/-. Plaintiffs paid earnest amount of Rs.2,00,000/- to defendant no.1. Thereafter, on 15.07.2022, the defendant no. 1 executed an agreement to sale in the right of plaintiffs. Plaintiffs also gave Rs. 1,00,000/- to defendants. They also paid Rs. 80,000/- to defendants by the means of phone pay application. Thus, plaintiffs paid total amount of Rs. 3,80,000/- to defendants. They also decided that plaintiffs will pay remaining amount to defendants at the time of registration of sale deed.

However, after agreement to sale, defendants have not executed and registered sale deed in favour of plaintiffs. Therefore, plaintiffs issued notice to defendants on 07.10.2022, but, defendants refused to register sale deed in favour of plaintiffs. Therefore, plaintiffs filed this suit against all defendants for the specific performance of contract. Plaintiffs also prayed to grant temporary injunction against defendants.

5. The defendant no. 2 to 5 filed written statement at Exh. 39 and opposed to this application on the ground that, the defendant no. 1 has not taken any consent of defendant no. 2 to 5 to sale the suit property. The alleged agreement to sale is not admitted by defendant no. 2 to 5. It is also not binding upon them. The agreement to sale is unregistered document and therefore, it is not

admissible in law. The defendant no. 2 to 5 have not made any transaction with the plaintiffs and therefore, prayed to reject the application.

6. The following points arose for my determination and I recorded my findings against each of it for the reasons given as under.

Sr. No.	Points	Findings
1]	Whether plaintiffs/applicants are having prima-facie case in their favour ?	Yes.
2]	Whether the balance of convenience lies in favour of plaintiffs/applicants?	Yes.
3]	Whether the irreparable loss will be caused to plaintiffs, if the temporary injunction will be refused?	Yes.
4]	What order ?	As per final order.

REASONS

7. In order to establish the claim against all defendants, plaintiffs produced some documents on record. Plaintiffs are also relied upon the true copy of 7x12 extract of field survey no. 273/7, the legal notice dated 07.10.2022, the original copy of the agreement to sale dated 15.07.2022 and other relevant documents.

On the other hand, defendants have not produced any documents to support their claim.

As to Point No.1 To 3 :-

8. It is the submission of plaintiffs that, the defendant no. 1 with the consent of defendant no. 2 to 5 agreed to sell suit property to plaintiffs for the total consideration amount of Rs. 8,00,000/-. Plaintiffs also paid earnest amount of Rs.3,80,000/- to defendant no. 1. But, they refused to register sale deed in their favour,

9. I read plaint, written statement at Exh.39 and the relevant documents. The agreement to sell dated 15.07.2022 demonstrate that, the defendant no. 1 executed an agreement to sell on 15.07.2022. The defendant no. 1 agreed that, he was intending to sale suit property for the total consideration amount of Rs.8,00,000/-. The agreement is also notarized before notary officer. Therefore, it appears that, there is some transaction between plaintiffs and defendant no.1.

10. So, on perusal of entire documents, it *prima facie*, appears that, plaintiffs paid earnest amount of Rs. 3,80,000/- to defendant no.1 intending to purchase the suit property. They are having right to obtain specific performance of contract. Therefore, plaintiffs can claim injunction against defendants that, they shall not alienate suit property.

11. Plaintiffs came with clean hands. *Prima facie*, they are having strong case against defendants. The balance of convenience is also lies in favour of plaintiffs. Therefore, irreparable loss will be caused to plaintiffs, if the injunction will be refused. On the contrary, no any irreparable loss will be caused to defendants, if the injunction

will be granted in favour of plaintiffs. I found substance in the application. In the result, I answer to point no. 1 to 3 as affirmative.

12. In view of above discussion, findings and reasons, I am of the opinion that, plaintiffs are entitled for temporary injunction. Accordingly, I proceed to pass the following order.

ORDER

- 1) The application at Exh. 5 is allowed.
- 2) Defendants or any other person shall not alienate suit property to any other persons till the final decision of this suit.
- 3) Plaintiffs are further directed to adduce their evidence (if any), immediately after framing issues.
- 4) Parties to take note of it.

Vaduj.
Date:21.07.2023

(D.D. Fulzele)
Civil Judge Sr. Dn., Vaduj.

(R.S. Phadatare) Stenographer