

ORDER BELOW EXH. 32

Read an application and the reply filed by defendant no. 5 at Exh. 41. Perused the record. Heard the learned counsel for the plaintiff Adv. Shri. R.M. Kulkarni and the learned counsel for defendant no. 5 Adv. Shri. N.S. Raut.

2. The plaintiff filed this instant application and submitted that, the plaintiff is the purchaser of city survey no. 393, situated at Kadgun, Tal-Khatav, Dist-Satara. (This is hereinafter referred as the suit property)

It is the contention of the plaintiff that, on 04.03.2023, the plaintiff agreed to purchase suit property from defendant no. 1 to 4 for the total consideration amount of Rs. 1,40,000/-. The plaintiff paid an earnest amount of Rs. 40,000/- to defendant no. 1 to 4 by means of cheque of IDBI, bank branch-Vavarhire, which cheque is bearing no. 034896. Meanwhile, defendant no. 1 to 4, without having consent of the plaintiff, sold the aforesaid property to defendant no. 5 on 03.11.2023. Defendant no. 1 to 4, on 03.11.2023, executed and registered sale deed in the right of defendant no.5. Now, defendant no. 5 is constructing house in the suit property.

3. Today, defendant no. 5 appeared through his counsel and filed one application to grant time to file written statement. Defendant no. 5 has not filed written statement till today. Defendant no. 5

opposed to this application by filing the reply at Exh. 41 and submitted that, defendant no. 5 purchased suit property from defendant no. 1 to 4 for total consideration amount of Rs. 80,000/- and thereafter, sale deed is registered on 03.11.2023. Defendant no. 5 became the owner and possessor of the suit property from the date of registration of sale deed and therefore, the plaintiff is not entitled for any injunction. Hence, defendant no. 5 prayed to reject the application.

4. The following points arose for my determination and I recorded my findings thereon for the reasons given as under.

Sr. No.	Points	Findings
1.	Whether the plaintiff/applicant is having prima facie case in his favour?	Yes.
2.	Whether the balance of convenience lies in favour of the plaintiff/applicant?	Yes.
3.	Whether the irreparable loss will be caused to the plaintiff, if the temporary injunction is refused?	Yes.
4.	What Order?	As per final order.

REASONS

5. In order to prove claim against defendants, the plaintiff produced some documents along-with the plaint i.e. the true copy of property card of city survey no. 393, the xerox copy of notarized agreement to sell dated 04.03.2023, the legal notice dated 11.03.2023, another legal notice dated 14.08.2023, photographs and other relevant documents.

On the contrary, defendant no. 5 produced some documents

i.e. the copy of sale deed dated 03.11.2023, the legal notice dated 18.03.2024, the true copy of property card of city survey no. 393, the xerox copy of NC report bearing no. 113/2024 of Pusegaon police station and the online receipt and other relevant documents.

AS TO POINT NO. 1 TO 3

6. It is the submission of the plaintiff that, the plaintiff already paid an earnest amount of Rs. 40,000/- to defendant no. 1 to 4 to purchase the suit property. Defendant no. 1 to 4 also executed an agreement to sell in the right of plaintiff on 04.03.2023. However, subsequently, defendant no. 1 to 4 sold suit property to defendant no. 5. After, registration of sale deed, defendant no. 5 is going to construct the house. Therefore, the plaintiff claimed injunction that, defendant no. 5 shall not construct anything in the suit property.

7. On perusal of record particularly, the agreement to sell dated 04.03.2023, as well as the copy of sale deed dated 03.11.2023, it prima facie appears that, the plaintiff paid an earnest amount of Rs. 40,000/- to defendant no. 1 to 4 and thereafter, agreement to sell was executed on 04.03.2023. Defendant no. 1 to 4 instead of execution of sale deed in the right of the plaintiff sold the suit property to defendant no.5 and the sale deed was also registered on 03.11.2023.

The copy of agreement to sell dated 04.03.2023, prima facie shows that, the plaintiff issued the cheque bearing no. 034896 of IDBI, bank branch-Vavarhire to defendant no. 1 and 2 paid Rs. 40,000/-. It also shows that, defendant no. 1 and 2 and agreed to sell the suit property to the plaintiff for the total consideration amount of

Rs. 1,40,000/-. Therefore, it prima facie appears that, the plaintiff is having interest in the suit property. It is not the case of defendants that, defendants returned the consideration amount of Rs. 40,000/- to the plaintiff. Under this circumstances, the plaintiff can claim injunction that, defendant no. 5 can't construct house in the suit property.

8. Prima facie, it appears that, the plaintiff is having strong case against defendants. No any irreparable loss will be caused to defendants, if the injunction is granted in favour of the plaintiff. However, the irreparable loss will be caused to the plaintiff, if the defendant no. 5 construct house in the suit property. The balance of convenience is also lies in favour of the plaintiff. I found substance in the application. In the result, I answered to point no. 1 to 3 as affirmative.

9. In view of the above discussion, findings and reasons, I am of the opinion that, the plaintiff is entitled to claim temporary injunction against defendants. Accordingly, I proceed to pass the following order.

ORDER

- 1) The application at Exh. 32 is allowed.
- 2) Defendant no. 5 shall not construct house or anything in the suit property till the final decision of the suit.
- 3) Defendant no. 5 shall not alienate suit property to any other person nor create third party interest in the suit property till the final decision of the suit.
- 4) Parties to take note of it.

Vaduj.
Date: 24.04.2024.

(D.D. Fulzele)
Civil Judge Senior Division, Vaduj.