


MHWS010011852024	Presented on : 19/10/2024
	Registered on : 22/10/2024
	Decided on : 01/04/2026
	Duration : 01Y, 05M, 12D

**IN THE COURT OF DISTRICT JUDGE -2, WASHIM,  
DIST. WASHIM.**

(Presided over by Smt. V.D.Ingle)

**Misc. Civil Appeal No.41/2024.**

**Exh.18**

1)	<b>Saw. Vidya w/o Vijay Bharti</b> Age 62 Yrs., Occu.- Agri.& Household,	<b>Appellants.</b>
2)	<b>Vijay s/o Parasram Bharti</b> Age 64 Yrs., Occu.- Retired serviceman  Both R/o. In front of Church Naryan Chawl, Parbhani, Tq.Dist. Parbhani, At present, Avalwadi, Post. Wagoli, Pune.	
<b>...Versus...</b>		
1)	<b>Ab.Karim s/o Moh. Hatam</b> Age 69 Yrs., Occu.- Agri. R/o Dev peth, Washim, Dist. Washim.	
2)	<b>Abdul Rafeek s/o Abdul Munaf</b> Age 58 Yrs., Occu.- Agri. R/o Mangalwadi Wesh, Washim, Tq.Dist. Washim.	

3)	<b>Gajanan s/o Gulab Puri</b> Age 53 Yrs., Occu.- Agri. R/o Shukrawar Peth, Washim, Tq.Dist. Washim.	<b>Respondents.</b>
<u><b>APPEAL UNDER ORDER 41 RULE 5 OF CIVIL PROCEDURE CODE.</b></u>		
<u><b>ADVOCATES -</b></u> Shri. S.N.Khandare : For Appellant Shri. G.V.Biyani : For Respondent no. 1 and 2 Shri. C.R.Deshpande : For Respondent no. 3		

**J U D G M E N T**  
**(Delivered on 01/04/2026)**

Being aggrieved by the order passed on the application for temporary injunction below Exh.05 on 19/09/2024 in Spl. Civil Suit No.01/2024, Vidya v. Abdul Karim and Ors by the learned Jt.Civil Judge (S.D.), Washim thereby rejecting the application for TI filed by the appellants, the appellants have filed present Misc. Civil Appeal. Parties would be referred to by their original nomenclature in the suit.

2] Appellants were plaintiffs before the trial Court. Parties are referred to as they stood before the trial Court.

3] It is contention of the appellants/plaintiffs that they were the owners of the suit property. The suit property is sold to

the defendant nos.1 and 2 by sale deed No.3837/2023 which is registered on 19.07.2023. The sale consideration was Rs.24,68,000/- out of which Rs.6,00,000/- were paid through RTGS and in lieu of remaining payment of Rs.18,68,000/- two cheques of different denomination were given and it was assured that on presentation of said cheques the same will be honoured. At the relevant time, it is agreed between them that if the cheques are dishonored plaintiff no.1 has right to take possession of the suit property. The plaintiff and the defendants since were known to each other as such believing on the statement of the purchaser the sale deed was executed by plaintiffs in favour of defendant no.1 and 2. The said cheques when were deposited for clearance the same were dishonored with an endorsement that 'stop payment'. Though intimation was sent to the purchaser that the cheques have been dishonored, but despite the amount was not paid. The plaintiffs stated that sale consideration remains unpaid. The prayer is made for cancellation of the sale deed no.3837/2023 and subsequent sale deed no.4620/2023 as not binding on plaintiffs. Further injunction was sought for the suit property should not be transferred to any third party.

4] After hearing the parties, the learned lower Court rejected the application for grant of temporary injunction. Hence, plaintiffs have filed present Misc. Appeal by contending that learned lower Court rejected application without considering the facts and documents on record.

5] It is submitted that the learned lower Court has not considered the law and record in its proper prospective and therefore, became to the erroneous conclusion. The learned lower court failed to consider the terms and conditions i.e. recitals in the suit sale deed i.e. sale deed no.3837/2023, dated 19/07/2023 and at the stage of considering the application u/o 39 rule 1 and 2 of the CPC. That while considering the prima facie, the learned lower Court failed to interrupt the term prima facie case. That learned lower Court failed to consider the pleading of the plaintiff. The learned lower Court failed to consider that while considering the nature of the transaction, various circumstances including intention of the parties and the condition as respondent as above was required to be considered. The contention of the defendant that the plaintiff suppressed the material fact in respect of condition of measurement of suit land is given unnecessary importance. The order of learned lower Court is against law, facts and documents on record and same is liable to be set aside.

6] As against this, it is contention of defendant No.1 and 2 that learned lower Court has rightly rejected the application for grant of temporary injunction of the plaintiffs. It is submitted that the suit property i.e. the agricultural land situated at Washim 2 Tq.Dist. Washim bearing field Sr.No.226, ad-measuring 10H 64R out of that share 0H 81R (including 02R pot kharab) was owned by plaintiffs. The plaintiff in the month of July 2023 had agreed to

sale the above land to defendant no.1 and 2. Plaintiff agreed that the property is divided in two parts wherein the part part is admeasuring 0H 58R land which is on western side and adjacent to the Walki road, the second part is admeasuring 0H 20R which is on eastern side and 0H 2R land is pot kharab land. The plaintiff agreed that she had agreed to sell the entire 0H 81R land for the consideration of Rs.24,68,000/- to the defendant no.1 and 2. The plaintiff also agreed that the defendant no.1 and 2 will pay Rs.6,00,000/- on 17/07/2023 and balance amount will be paid after the Government measurement wherein she agreed to get the field measured from Government office before 17/10/2023.

7] As agreed in between the plaintiff and defendant no.1 and 2, plaintiff on 17/07/2023 accepted the consideration of Rs.6,00,000/- by way of RTGS from the defendant no.1 and 2. The sale deed was registered at the Sub Registrar Washim at Sr.No.3837/203 dated 19/07/2023. The plaintiff had transferred the ownership and possession of the agricultural land bearing survey no.226, admeasuring 0H 81R to the defendant no.1 and 2. As agreed in between the plaintiff and defendant no.1 and 2 the defendant no.1 and 2 had given the cheques bearing no.792195 and 000044 of Rs.9,34,000/- each. The plaintiff and defendant no.1 and 2 had clearly agreed that the ownership of the land admeasuring 0H 81R land is transferred to the defendant no.1 and 2 on 19/07/2023 vide document no.3837/2023. The plaintiffs have failed to measure the suit property and to perform her part of

contract and hence, he is not entitled to claim the relief of declaration. Suit of the plaintiff is false and frivolous one and hence, the same needs to be dismissed and compensatory cost of Rs.5,00,000/- be imposed on the plaintiff.

8] Perused written arguments filed by learned advocate for the appellant also heard learned advocate for both the sides.

9] Following points arise for determination and I have recorded my findings thereon for the reasons followed thereafter :

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether plaintiffs prove that they have prima facie case ?	In the affirmative.
2.	Whether plaintiffs prove that balance of convenience lies in their favour ?	In the affirmative.
3.	Whether plaintiffs prove that they would suffer irreparable loss if order of temporary injunction is not granted ?	In the affirmative.
4.	Whether order of learned trial Court warrants interference ?	In the affirmative.
5.	What order ?	As per final order.

### REASONS

#### As to point Nos.1 to 5 :-

10] As point Nos.1 to 4 are related with each other, I am discussing those points together. In support of their rival contentions, both the parties have relied upon several documents

11] I have gone through the record and impugned order. It appears that the learned trial Court in para no.11 of its order observed that,

*“ the words and language used in the sale deed no.3837/2023, it is seen that two conditions are specifically mentioned that if the cheques are dishonoured then plaintiffs have right to take possession and second important condition is that initially plaintiffs have to measure the suit property through Government agency and they are entitled only for consideration as per the area in the measurement. Admittedly, plaint is totally silent about the fact that plaintiffs have carried out the measurement and thereafter they have presented the cheques. Unless and until the important condition of measurement is fulfilled, plaintiffs are not entitled for the remaining consideration. Because it is agreed between plaintiffs and defendant nos.1 and 2 that, remaining consideration is to be determined on the basis of area*

*found out in the measurement. However, it is seen that they have hastily presented the cheques. So also, plaintiffs have suppressed these facts in the pleading and it shows that they have not come before the court with clean hand. As plaintiffs have failed to performance their part of contract as per the recitals in the sale deed, they are not entitled for discretionary relief of injunction.” and thereby rejected the application Exh.5.*

12] I have also gone through the sale deed no.3837/2023 which is on record. It shows that the sale deed is executed by the petitioner in favour of respondent no.1 and 2 dated 19/07/2023 that in that said sale deed on internal page no.2 it is mentioned that if cheque no.792195 and 000044 are not in cash within the time i.e. 17/10/2023 this sale deed shall cancelled and petitioners right and title reclaimed possession of the sale deed shall remain intact.

13] From the record it appears that the plaintiff has pleaded that the suit land i.e. OH 81R land was agreed to be sold for a consideration of Rs.24,68,000/- out of agreed amount Rs.6,00,000/- was paid and Rs.18,68,000/- is unpaid. In order to satisfy the agreed consideration, two cheques were issued and when the petitioner informed to the respondent no.1 and 2 that he intended to encash the said cheque on dated 17/10/2023, the

respondent no.1 and 2 requested a period of 4 to 5 days to deposit the amount into the plaintiff's account. Therefore, the petitioner on dated 23/10/2023 deposited the said cheque in her account. But the said cheque was dishonoured on 26/10/2023. The bank issued written memo mentioning payment stop by drawer. Thereafter, the petitioner issued legal notice to the respondent no.1 and 2 on dated 16/11/2023. In meantime, the petitioner also applied for measurement of the suit property. The learned counsel for the petitioner filed on record challan copy which shows that the petitioner has paid Rs.61,000/- for measurement of survey no.224 on 15/09/2023.

14] From the record it also appears that the defendant no.1 and 2 executed the sale deed in favour of respondent no.3 on 01/09/2023 i.e. before encashment of the cheque by the petitioner. So also, before measurement of the suit land by the petitioner. Hence, it appears that petitioner has proved the prima facie case. Balance of convenience also lies in her favour.

15] For the reasons discussed above, the impugned order warrant inference. Hence, I answered point no.1 to 4 in the affirmative and in answer to point no.5, I proceed to pass following order.

	<b><u>ORDER</u></b>
1.	Appeal is partly allowed, with costs.

2.	Plaintiff's application (Exh.5) in Spl.C.S. No.1/2024 is allowed.
3.	The defendant no.1 and 2 are hereby restrained from alienating suit property or to create third party interest in respect of 0.61R land till disposal of the suit.
4.	For better clarity, it is made clear that impugned order is maintained to the extent of restraining the defendant no.1 and 2 from creating third party interest in respect of 0.61R land.
5.	Inform trial Court accordingly.
	(Dictated and pronounced in open Court.)

Date : 01/04/2026

(VD.Ingle)  
District Judge 2, Washim.

**CERTIFICATE**

I affirm that the contents of this P.D.F file Judgment/Order are same word to word, as per the original judgment/order.

Name of Stenographer :- R.R.Bharad, Stenographer (Grade-I)  
Name of Court :- Smt.VD.Ingle  
District Judge-2 and Additional  
Sessions Judge, Washim.  
Date of Judgment/ Order :- 01/04/2026  
Judgment/Order signed by :- 02/04/2026  
the Presiding Officer on  
Judgment/Order uploaded on :- 02/04/2026