

MHWS070014732024

RCS No. 48/2024

Sanghmitra Vs. Kartik Wase



ORDER BELOW EXH-05

(Passed on 21st October, 2024)

1. This is an application filed by the plaintiff under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 to restrain the defendants from creating third party interest in the suit property.

2. Plaintiff sold his property admeasuring 1H 1R out of the field Survey/Gat No. 69/6 at Mouje Karli, Tq.Karanja, Dist.Washim to the defendants by registered Sale-Deed on 09/07/2024. The plaintiff has described the four boundaries of the suit property as follows;

To the East - Land of Siddhartha Vishnu Wase,
To the West - Land of Kamalabai Ravindra Wase,
To the North - Land of Pramila Dilip Wase and
To the South - Land of Baban Marotrao Thakare.

3. It is the contention of the plaintiff that she agreed to sell the suit property for the consideration of Rs.4,74,000/- on the condition that the consideration amount will be transferred by the defendants in the account of the plaintiff through RTGS. Accordingly, defendant No.3 paid Rs.2,00,000/- by way of RTGS on 10/07/2024. When the plaintiff asked the defendants to pay the remaining consideration amount of Rs.2,74,000/-, defendant No.2 and 3 refused to pay the balance consideration amount. Therefore, the plaintiff has no alternative, but to cancel the said Sale-Deed. Hence, the plaintiff has knocked the doors of this court by filing the instant suit.

4. After the execution of the registered Sale-Deed, the defendants have mutated the name of defendant No.1 in the revenue record. Thus, the

plaintiff has fear in her mind that the defendants will create any sort of charge loan or mortgage over the suit property or may create a third party interest by the alienation of the suit property. Hence, to prevent the same the present application is filed.

5. All the defendants appeared in the present suit and filed their say to the present application. Defendants submitted that the plaintiff has suppressed the material fact that, prior to the present Sale-Deed there was an agreement to sell between the plaintiff and the defendant No.3. They entered into the agreement to sell of the plot admeasuring 77 Sq.mtr. situated at Shanti Nagar, Mouze Ajampur, Tq.Karanja, Dist. Wahsim for the consideration of Rs.11,00,000/-. In furtherance of the said agreement, Rs.3,20,000/- was paid by the plaintiff to the defendant No.3 and it was agreed that the remaining consideration shall be paid on or before 30/12/2024 i.e. at the time of execution of Sale-Deed. But in the month of June-2023 the said agreement to sell was cancelled orally and Rs.1,20,000/- was returned to the defendant No.3 by the plaintiff. Further, it is submitted that the plaintiff was in the financial crises and therefore, plaintiff agreed to sell the suit property to the defendant No.3 for the consideration of Rs.4,74,000/- as the defendant No.3 has paid Rs.2,00,000/- to the plaintiff, he has no obligation to pay any consideration amount. On this count, the defendants prayed for the rejection of the application.

6. The points for determination along with my reasons are as follows.

Sr. No.	Points	FINDINGS
1	Whether the plaintiff has a prima facie case?	Yes
2	Whether the balance of convenience lies in favour of the plaintiff?	Yes
3	Whether the plaintiff will suffer an irreparable loss if an	Yes

	injunction as prayed is not granted in his favour?	
4	What order?	Application Allowed

REASONS

As to point no.1 to 3:-

7. The plaintiff has filed on record the Sale-Deed in respect of the suit property, 7/12 extract of Gat No.69/6 and the copy of the objection filed by the plaintiff before the Revenue Officer Mouze Karli, Tq.Karanja, Dist.Washim for objection on mutation.

8. Heard both the parties and perused their respective pleadings. It is argued by the Ld. Adv. J.M. Khan for the plaintiff that the plaintiff was the owner and the possessor of the suit property. As the plaintiff has not received the consideration amount of the Sale-Deed, the possession of the suit property is not handed over to the defedants. However, the defendants have applied for the mutation before the Revenue Authority. Thus, the defendant may create any sort of third party interest in the suit property by alienating it or by mortgage it. Hence, the interest of the plaintiff in the suit property must be protected.

9. On the contrary, the defendants filed their say contending that no injunction can be granted to the plaintiff when she has suppressed the material fact from the court. Hence, prayed to reject the application.

10. Perused the application, say of the defendants and the documents filed on record by the plaintiff. From the bare perusal of the application, it is prima facie seen that the contents mentioned in the application are supported with the documents. It is prima facie seen that the plaintiff was the owner of an agricultural land situated at Gat No.69/6. As the plaintiff did not receive the consideration amount in whole, she has a right to cancel the said Sale-Deed. Though, the defendants have presented a new

story of the the agreement to sell prior to the Sale-Deed, there is some ambiguity in the pleading by the defendants. It is contended that defendant No.3 has paid Rs.7,000/- in cash on 09/07/2024 and Rs.67,000/- through Phone-pay and Google-pay to the son of plaintiff. However, there is no document placed on record about the cancellation of the said agreement to sell. Therefore, at this juncture it cannot be said that the present Sale-Deed is a result of the cancellation of the said agreement to sell between the plaintiff and the defendants. It is pertinent to note here that the defendants have expedately mutated the name in the revenue record during the pendency of the present application. Therefore, possibility of creating third party interest in the suit property cannot be ruled out. The anticipation of the plaintiff is justified. Therefore, there is a prima facie case in favour of the plaintiff.

11. As discussed above, plaintiff has made out an arguable case. However, mere presence of prima-facie case is not the sole criterion for granting injunction. Other two conditions i.e. balance of convenience and irreparable loss are also required to be established.

12. It is seen that though the plaintiff is in possession of the original Sale-Deed and the suit property, the defendant has mutated the name in the revenue record. It clearly shows that the defendant may create third party interest in the suit property by any means. If a third party interest is created, it will affect the rights of the plaintiff rather than the defendants. Therefore, I am of the view that the balance of convenience is also in favour of the plaintiffs.

13. In the light of the discussion made in the foregoing paragraphs, I find that the plaintiff is having a prima-facie case. Plaintiff has claimed that she is facing mental hardship due to the non-payment of the consideration amount by the defendants. Therefore, it is necessary to restrain the defendants from creating third party interest in the suit property. The claim of the plaintiff cannot be said to be unjust or unreasonable. Balance of

convenience tilts in favour of the plaintiff. She would suffer irreparable loss if the temporary injunction, as prayed is not granted. Hence point no. 1 to 3 are answered in affirmative. Resultantly, in answer to point no. 4, I pass following order.

ORDER

1. Application is allowed.
2. Defendants, their agents, servants, or any person appearing on their behalf are hereby restrained fro creating any sort of third party interest by way of alienation, charge, loan or mortgage of the suit property.
3. Costs in main cause.

Date : 21/10/2024. Karanja (Lad)		(Smt. S.N.Pund) Jt.Civil Judge (Jr.Dn.), Karanja (Lad).
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CERTIFICATE

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

Name of Stenographer	:	D.V. Daware (Stenographer Grade-III
Court Name	:	Jt. Civil Judge (JD) & JMFC, Karanja.
Date	:	21/10/2024
Order signed by the Presiding Officer on	:	21/10/2024
Order uploaded on	:	22/10/2024