

ORDER BELOW EXH.5

Application exhibit-5 is for temporary injunction under Order 39 Rule 1 & 2 of CPC. The suit is for specific performance. By application it is stated that the applicant has made substantial payment but the defendants are avoiding to execute sale-deed in respect of suit land, which is the subject matter of agreement to sell dated 11.10.2017 which also got extended time and again. Therefore, until disposal of suit the defendants, particularly defendant no.1 be restrained from creating third party interest in the suit property.

2. Application is opposed by filing written-statement cum say at exhibit-16, thereby denying all allegations made in the application. Agreement dated 11.10.2017 is admitted. It is stated that the plaintiff agreed to purchase entire land ad-measuring 1.38 HR from gat no.124 situated at Mahuli. But now, the plaintiff illegally showing transaction only in respect of 0.46 HR and trying to grab entire property. He is mischievous person and always dealing in disputed properties at Darwha and deceiving several persons. In that regard litigations are going on. So application be rejected.

3. Heard Shri.Imran Deshmukh, learned advocate for the applicant and Shri.M.A.Kawale, learned advocate for the defendants. Considering submissions and on perusal of record, the following points arise for determination :

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the plaintiff proves that he has (i) prima-facie case, (ii) balance of convenience in his favour and (iii) would suffer an irreparable loss, if application is rejected ?	Yes.
2) What order ?	... Application allowed as per final order.

REASONS

4. It is submitted on behalf of the applicant that there are written documents in respect of the transaction agreed between the parties, payment made and those are filed with list exhibit-3. Substantial payment towards transaction is made and received by defendant no.1. In such factual position temporary injunction needs to be granted to protect right of the applicant as the documents goes to prove three essential principles for grant of such relief. In this regard he placed reliance on the decision of the Hon'ble Bombay High Court in a case of ***Dr.Prithi Paul Singh Sethi vs. Twist Spin Industries, 2010 (2) ALL MR 824.***

5. On behalf of the defendants it is submitted that the transaction agreed between the parties is in respect of entire area ad-measuring 1.38 HR of gat no.124. Loan on said gat number shall remain on another gat number 123 of the same party. Defendant no.1 and her husband are ready to execute sale-deed for entire area but the plaintiff himself is deliberately and to deceive them avoiding to execute sale-deed and trying to grab entire property by paying much less amount.

6. I have gone through written documents filed by the applicant with list exhibit-3. There are four written documents in respect of the agreed transaction, making payment by the applicant to defendant no.1 and extending time for executing sale-deed. These documents have not been denied by the defendants, particularly defendant no.1.

7. On going through these documents it is clear that from first date i.e. 11.10.2017 defendant no.1, in whose name land which subject matter of the suit is standing, agreed to sell West side portion of *nala* passing from gat no.124. On measuring land and clearing loan of Rs.4,50,000/- of HDFC Bank, Yavatmal Branch, on the said land, sale-deed agreed to be executed by defendant no.1. Written agreement and extension of time sought for execution of sale-deed by defendant no.1, executed by the parties on 11.10.2017, 31.1.2018, 30.4.2019 and 23.5.2019. The applicant on each date made substantial payment in lacs of rupees by cheque to defendant no.1 and she acknowledged the payment in writing by the same documents. Perusal of these documents clearly shows that defendant no.1

agreed to sell part of West side of the said gat and has agreed further it admeasures 0.46 HR. As agreed total consideration for the said area cum to Rs.8,41,432/- out of which the applicant paid Rs.8,16,432/- and balance is Rs.25,000/-. As such almost entire consideration is paid and received by defendant no.1. Defendant no.2 is husband of defendant no.1. Loan of HDFC Bank is not cleared by the defendants. Any steps of measurement of the land also not taken by the defendants.

8. It is seen that the applicant though pleaded case for 0.46 HR area of the said gat prayed for specific performance in respect of entire area i.e. 1.38 HR. But, mere prayer which distinctly seen without basis in pleading, will not be decisive factor. That will be decided on the basis of evidence at the time of final adjudication. It is also noticed that last document dated 23.5.2019 is titled as “ ताबा पावती ” it nowhere states that defendant no.1 handed over possession to the applicant. Knowing this fact very well, the applicant not pleaded that he is in possession of the property. But certainly it appears that the applicant is not straight forward person. But that alone will not disentitle him from the relief, if otherwise he is entitled to.

9. In the case of **Dr.Prithi Paul Singh Sethi (cited supra)** on the basis of substantial payment of transaction found being made, it is held that, such party is entitled for relief of temporary injunction. In this case almost entire amount of 0.46 HR area is made by the applicant. All are written documents. So the plaintiff has prima-facie case, balance of convenience in his favour and if at all the defendants entered into transaction with third party there will be multiplicity of litigation. So I answer point no.1 in affirmative.

10. For above stated reasons, the applicant is entitled for the relief sought. Hence :

Defendant nos. 1 and 2 are restrained from creating third party interest in respect of 0.46 HR West side area of gat no.124 situated at Mahuli, for the period of one year from the date of this order.

Costs would be costs in cause.

Date : 22.3.2021

Civil Judge Senior Division
Darwha.

