MHPU020022312020	**S.C.S. No.651/2020** **Vishal Ramchandra Karuna & Ors.** **V/s.** **Mrs. Jyoti Vilas Rathod & Ors.**

: <u>ORDER BELOW EXH.5</u> :

(Dated 31st day of July, 2026)

This application is filed by plaintiffs for granting of temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'C.P.C.').

2] The suit property is bearing Flat No.3, 1st Floor, D.K. Heights, Survey No.6, Hissa No.14, CTS No.606+607, Mouje Pashan, Pune total area 119.79 sq. mtrs. (which is more particularly defined and described in paragraph No.1 of the plaint) (hereinafter referred as 'suit property' for the sake of brevity). The plaintiffs asserted that, they are the owners and possessors of the suit property. They originally purchased the suit property on 02.11.2006, from the developer, M/s. Dhamale Kokate Construction by registered agreement. In September-2019, defendant No.4 directly approached the plaintiffs and proposed to initially execute an agreement to sell, followed by a Sale Deed only after the full payment was arranged. The plaintiffs further alleged that, by taking disadvantage of their age, defendant No.4 got executed the said transfer deed within two days. On 03.09.2019 the defendants allegedly deceived the plaintiffs into signing and registering a Transfer Deed (sale deed) No.12878/2019 at the Sub-Registrar Haveli No.22 office, falsely presenting it as a mere 'Agreement to Sell'. The plaintiffs signed the document without reading it, relying entirely on the defendants' false assurances.

3] It is further contention of the plaintiffs that, on the day of registration, the defendants handed over 9 post-dated cheques to the plaintiffs as consideration. The plaintiffs deposited the first three cheques dated 05.09.2019 for encashment, however, all three cheques were dishonoured. Despite assurances from the defendants, the subsequent six cheques also dishonoured upon deposit. Thereafter, upon obtaining a photocopy of the registered document, the plaintiffs realized that, the defendants have cheated to them by taking their signatures on transfer deed instead of an 'Agreement to Sell'. Thereafter, on 06.11.2019, the defendants transferred a partial payment of ₹15,00,000/- in November-2019. The plaintiffs claimed that, they are in actual and physical possession over the suit property, and all original title documents of the suit property are having in their custody. The plaintiffs apprehend that, the defendants are trying to create third-party interests in the suit property and that if the defendants alienate the same, it will lead to multiplicity of proceedings and cause them irreparable loss. The plaintiffs have *prima facie* case and balance of convenience lies in their favour. If temporary injunction is rejected, then they will suffer irreparable loss. Hence, they filed the present application for granting temporary injunction for restraining to the defendants from selling, transferring, alienating, or creating any third-party interest in the suit property.

4] Defendant Nos.1 to 3 appeared and resisted the claim of the plaintiffs by filing their reply *vide* Exh.29, in which, they have vehemently denied the allegations of fraud, misrepresentation, and cheating in their entirety. They specifically denied that, they have fraudulently obtained the signatures of the plaintiffs on the transfer deed, under the guise of an 'Agreement to Sell'. The defendants further asserted that, prior to two days from execution of the transfer deed, it was handed over to the plaintiffs, and it was registered only after necessary corrections and suggestions were made. The defendants claimed that, the plaintiffs are highly educated, understand English, and signed the document with full knowledge of its contents. They received vacant and peaceful possession of the suit property immediately upon the execution of the registered transfer deed, making them the rightful owners.

5] The defendants also averred that, the suit lacks a proper cause of action, as the plaintiffs' claim regarding the bouncing cheques in 2019 is a concocted story, especially since the plaintiffs have admitted to receive ₹15,00,000/- subsequently. Though, the defendants admitted that, the original property documents are still with the plaintiffs, however, they claimed that, the plaintiffs had taken a loan on the property from Punjab National Bank, and the original documents were with the said bank. The defendants repeatedly requested the plaintiffs to provide a 'No Dues Certificate' from the said bank and hand over the original documents. The defendants explicitly instructed the plaintiffs not to deposit those cheques until the NOC and original documents were supplied. The plaintiffs deliberately deposited those cheques against these instructions to create a false cause of action and cheated the defendants. The defendants stated that, they are, and have always been, ready and willing to pay the entire balance consideration, provided the plaintiffs perform their part of the obligation by supplying the NOC and the original documents. They denied the plaintiffs' title and submitted that, the suit is based on baseless allegations. They submitted that, the plaintiffs have executed the said sale deed in favour of defendant Nos.1 to 3. Defendant No.4 has no privity of contract with the plaintiffs. Thus, the suit is bad for mis-joinder of parties, as defendant No.4 never dealt with the suit property. They are not trying to alienate the suit property by any mode or manner. It is further submission of the defendants that, the plaintiffs filed this suit by concealing the real facts and therefore, they do not come with clean hands. The plaintiffs filed this false suit against them with an oblique and sinister motive to harass them. The plaintiffs have filed a frivolous suit and dragged the present defendants into unwanted litigation with the only intention to usurp the hard earned property of the defendants. There is no any *prima facie* case in favour of the plaintiffs. Hence, the defendants prayed for dismissal of this application.

6] On perusal of material on record, following points arise for my determination and I have recorded my findings against each of them, for the reasons to follows :

	POINTS		**FINDINGS**
(1)	Whether plaintiffs have made out *prima facie* case in their favour ?	→	In the affirmative.
(2)	Whether balance of convenience lies in favour of plaintiffs ?	→	In the affirmative.
(3)	Whether plaintiffs will suffer irreparable loss, if temporary injunction is not granted in their favour?	→	In the affirmative.
(4)	What order ?	→	Application is Allowed.

REASONS

7] In order to substantiate their respective contentions, both the parties have filed some documentary evidence on record. Heard both the learned counsels for the parties at length. Perused application, documents filed on record as well as affidavit on behalf of both the parties.

8] In order to be entitled to an order in terms of Order 39 Rule 1 and 2 of C.P.C, the party claiming as to show :-

A) Prima facie case,

B) Balance of convenience in his favour and

C) Irreparable loss.

The principles on which grant of injunction rests in the facts and circumstances of each individual case there must exists a strong probability that, the applicants have an ultimate chance of success in the suit. This concept is what is usually known as a *prima facie* case. As the injunction is granted during the pendency of the suit, the Court will interfere to protect the plaintiffs from injuries which was irreparable loss. The express 'Irreparable injury' means that it must be material one which cannot be adequately compensated for in damages. The injury need not be actual but may be apprehended. The Court is to balance and weigh the mischief for inconvenience to either sides before issuing or withholding the injunction. This principle is otherwise expressed by saying that the Court is to look to the balance of convenience.

9] **<u>AS TO POINT NO.1</u>** :

I have gone through the record. The learned counsel for plaintiffs has submitted that, the plaintiffs have filed all the relevant documentary evidence in support of their claim. Therefore, the plaintiffs have proved by filing various documents on record that, they are in possession over the suit property and the defendants are trying to create third party interest over the suit property. Therefore, there is *prima facie* case in favour of the plaintiffs. So also, the balance of convenience lies in favour of the plaintiffs and if temporary injunction is not granted in their favour, in that event, they will suffer irreparable loss, therefore, he prayed for temporary injunction in favour of the plaintiffs. *Per Contra*, the learned counsel for the defendants has submitted that, the plaintiffs are not owners and possessors of the suit property, rather, the defendants are in possession over the suit property. Therefore, there is no any *prima facie* case in favour of the plaintiffs. Hence, their application for granting temporary injunction is liable to be rejected out rightly.

10] I have considered the above arguments in the light of documents filed by both the parties on record. The plaintiffs basically filed the present suit for declaration, cancellation and injunction. Admittedly, both the parties have filed affidavits against each other. Thus, there is oath against an oath. Now the question arises that who is to be believable and reliable. It is a settled principle of law that for the grant of a temporary injunction, the Court must be satisfied that there is a serious question to be tried and that the plaintiffs have a *prima facie* case.

11] The learned advocate for the defendants has further relied upon the judgment of the Hon'ble Supreme Court in ***Ram Saran & Anr. vs. Smt. Ganga Devi*** reported in AIR 1972 SC 2685. Wherein, it is held that, *" Where the defendant is in possession of the suit properties and the plaintiff in his suit does not seek any possession of those properties but merely claims a declaration that he is owner of the suit properties, the suit is not maintainable."*

12] Significantly, both parties have claimed that, they are in possession of the suit property. In this context, the defendants relied on the Completion Certificate dated 19.12.2019 issued by the Competent Authority, demonstrating the legality of the construction and their possession/status. After perusal of documents file by defendants, *prima facie* appears that, the defendants are in possession of the suit property. However, the plaintiffs have strongly denied about the possession of defendants over the suit property. It is worthwhile to note here that, it is the premature stage of the suit and evidence of both the parties is yet not adduced. The suit is undoubtedly true that, to determine such a pivotal issue evidence is required.

13] The plaintiffs have claimed that, the said transfer deed was executed without consideration and hence, it is void *ab-intio*. In this context, the learned advocate for the plaintiffs has relied upon the judgment of the Hon'ble Supreme Court in ***Kewal Krishan vs. Rajesh Kumar & Ors.*** reported in (2021) SCC OnLine SC 1052. Wherein, it is held that,*"a sale deed executed without the payment of price/consideration is void and does not confer any title ."*

14] On the other hand, the learned advocate for the defendants has relied upon the judgment of the Hon'ble Orissa High Court in ***Umakanta Das & Anr. vs. Pradip Kumar Ray & Ors.*** reported in AIR 1986 Orissa 196. Wherein, it is held that,*" title passes upon the date of execution and does not depend on the passing of consideration unless the terms of the deed explicitly state otherwise."*

15] The learned advocate for the defendants has also relied upon the judgment of the Hon'ble Andhra Pradesh High Court in ***Kutcherlakota Vijayalakshmi vs. Radimeti Rajaratnamba & Ors.,*** reported in AIR 1991 AP 50. Wherein, it is held that,*" a purchaser gets title even if consideration under a registered sale deed is not paid. The sole remedy of the vendor is to claim the balance consideration, for which a statutory charge exists"*

16] The learned advocate for the defendants has further relied upon the judgment of the Hon'ble Orissa High Court in ***Guru Bari Lenka & Anr. vs.***

Dulani Thakurani & Ors., reported in AIR 1971 Orissa 147. Wherein, it is held that,*" Where the parties agree that the title would pass even though the payment is deferred, the title must be deemed to have passed even without passing of consideration."*

17] The learned advocate for the defendants has further relied upon the judgment of the Hon'ble Calcutta High Court in ***Murari Ganguly & Ors. vs. Kanailal Garai & Ors.,*** reported in AIR 2003 Calcutta 105. Wherein, it is held that, *"Part consideration accepted by vendor, agreeing to receive balance consideration on fulfillment of certain conditions. No default clause in sale deed stipulating its cancellation on failure of vendee to pay balance consideration. The sale deed is valid."*

18] The learned advocate for the defendants has further relied upon the judgment of the Hon'ble Mysore High Court in ***Siddanna Bovi & Ors. vs. Hanumntha Reddy.,*** *reported in* AIR 1972 Mysore 23. Wherein, it is held that*, "on execution complying with the provision, transfer of interest in the property given as security takes place. Thereafter, failure of consideration will not make the deed void."*

19] The learned advocate for the defendants has further relied upon the judgments of the Hon'ble Punjab & Haryana High Court in ***Ajmer Singh & Ors. vs. Nishi Kumar & Anr.,*** reported in AIR 2004 P&H 85 and the Hon'ble Chhattisgarh High Court in ***Satyaprakash vs. Satrughan & Ors.,*** reported in MANU/CG/0451/2020. Wherein, it is held that,*" payment of the entire price is not an absolute condition precedent for the completion of a sale."*

20] In this connection, Section 54 of the Transfer of Property Act, 1882, defines 'sale' as a transfer of ownership in exchange for a price paid or promised, or part-paid and part-promised. Thus, the plaintiffs' reliance on *Kewal Krishan* (*supra*) regarding the validity of a sale deed without consideration raises a serious disputed question of fact. Whether consideration was paid or not, and what the intention of the parties was, requires detailed evidence. A registered document carries a presumption of validity. At this interlocutory stage, the Court cannot presume the transaction to be void merely on the plaintiffs' bare assertion. It is opt to mention here that, the issuance of 9 post-dated cheques by the defendants on the date of execution constitutes a clear 'promise' to pay the consideration. Furthermore, the plaintiffs themselves admit in their pleadings that they subsequently received ₹15,00,000/- from the defendants in November 2019. Therefore, the ratio of *Kewal Krishan* is distinguishable and does not assist the plaintiffs.

21] It is imperative to mention here that, the central dispute revolves around the non-payment of the agreed consideration and its effect on the validity of the Transfer Deed. It is an admitted position that, the 9 post-dated cheques issued at the time of registration were dishonored. Apparently, the immediate dishonor of all 9 cheques casts a serious shadow on the defendants' intention to pay at the time of execution. In this context, the defendants' defense that they withheld payment because an NOC was not provided, is a matter for trial, but it unequivocally confirms that the substantial bulk of the consideration remains unpaid. Furthermore, it is an admitted fact that the original title documents are still in the possession of the plaintiffs, which strongly supports the plaintiffs' contention that a complete transfer of ownership and possession was not intended until full realization of the consideration. Therefore, the plaintiffs have successfully raised a substantial, triable issue (*prima facie* case) regarding whether the title legally passed or if the transfer deed is vitiated by fraud and lack of consideration.

22] The primary apprehension of the plaintiffs are the alienation of the property. Since the legality of the Transfer Deed is under serious challenge due to the admitted non-payment of the major portion of the consideration, allowing the defendants to exercise absolute rights of ownership during the pendency of the suit, could lead to devastating consequences. If the defendants are permitted to alienate the suit property or create third-party rights, it will result in multiplicity of proceedings and cause irreparable, incalculable loss to the plaintiffs, who are senior citizens. Thus, the balance of convenience lies in favour of the plaintiffs. Notably, the defendants admitted that, they have not paid the full amount/consideration and have not received the original documents. Thus, restricting them from creating third-party interests will not cause them undue hardship compared to the risk posed to the plaintiffs.

23] It is worthy to note here that, the plaintiffs have yet not received the full consideration amount and hence, their rights are involved in the suit property. Therefore, at this stage, it is justifiable to protect the right of the plaintiffs till the final disposal of the suit. Hence, I have no hesitation to hold that the plaintiffs proved *prima facie* case in their favour. As the plaintiffs have proved *prima facie* case in their favour, the balance of convenience is also tilt with them. While coming to the point of comparative hardship or irreparable loss, in that circumstances, the plaintiffs will suffer greater hardship. On the other hand, no hardship would be caused to the defendants, as if they will succeeded finally in the suit, they would gain the loss sustained by them. In the above cited facts and circumstances, I hold that this is a fit case in which discretionary relief of injunction as sought to be granted in favour of the plaintiffs. Accordingly, I have answered point Nos.1 to 3 in the affirmative.

24] AS TO POINT NO.4 :

For the reasons assigned to point Nos.1 to 3, the plaintiffs have succeeded to establish the 'triple test' required for the grant of temporary injunction. So far as, costs of this application is concerned, it will be governed by the decision of the suit. Hence, I answer this point accordingly and pass the following order :

: ORDER :

1) Application is hereby allowed.

2) The defendants, their relatives, servants, agents or anybody else are hereby restrained from selling, transferring, alienating, or creating any third-party interest in the suit property by any mode or manner, till the final disposal of the suit.

3) Costs in cause.

4) It is made clear that observations made in this order are restricted to the present application only and it will not affect the merits of the suit.

5) As the case is old one, both the parties are hereby directed to co-operate the Court in expeditious disposal of the suit.

6) The parties to take note of this order.

DISTRICT COURTS MAHARASHTRA

Digitally signed by DEEPAKKUMAR MOHANLAL MATA
Date: 2026.07.31 19:00:19 +0530

Date - 31/07/2026

(Deepakkumar M. Mata)
4th Jt. Civil Judge Sr. Dn.,
Pune.

CERTIFICATE

I affirm that the contents of this P. D. F. file Order is same word for word as per Original Order.

Name of Steno	:	Amit M. Mane, (Stenographer Grade-III)
Court Name	:	Deepakkumar M. Mata 4th Jt.Civil Judge Senior Division, Pune.
Date of Order	:	31/07/2026
Order signed by the Presiding Officer	:	31/07/2026
Order Uploaded on	:	31/07/2026