



-:: Order below Exh.5 ::-

This is an application of the plaintiff under Order-39 Rule 1 & 2 of Civil Procedure Code for grant of temporary injunction to restrain the defendants from interfering in his possession over the suit property as well as to restrain them from creating any third party interest in the same during pendency of the suit.

02. The suit property is consisting of land from Gat Nos.226 & 227 ad-measuring 28,000 sq.ft. situated at Udgir, Tq. Udgir, Dist. Latur, having boundaries as under -

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|---------------|---|------------------------------------|
| Towards east | – | land of Khaja Guttedar, |
| Towards west | – | 100 ft. wide road Udgir to Jalkot, |
| Towards south | – | land of Chaudari, |
| Towards north | – | land of Chalwa. |

(here in after referred as “suit property” for sake of convenience).

03. It is the case of the plaintiff that, one Sumanbai who was the owner in possession of the agricultural lands in Gat Nos.226 and 227 ad-measuring 4 R and 32 R respectively. The defendant Nos.1 and 2 being her sons were cultivating the said lands. The defendant Nos.1 to 6 are the heirs of Sumanbai (since deceased). The defendant No.2 preferred a Special Civil Suit No.21/2016 for partition of the said properties which was compromised by way of which the defendant Nos.1 and 2 were to pay Rs.2,00,000/- each to defendant No.3 to 6 who were to relinquish their shares in lieu of the said amounts. The land S.No.226 to the extent of 4 R was to be retained by deceased

Sumanbai and the defendant Nos.1 and 2 were to receive 16 R land each from S. No.227. Accordingly, the decree was passed and the mutations were effected. The lands from S.No.226 and 227 are situated adjacent to each other and therefore the deceased Sumanbai and the defendant Nos.1 and 2 agreed to sale the suit property from the said Survey numbers in favour of plaintiff by executing an agreement of sale on 27/10/2017. The price of the suit property was fixed at Rs.1,090/- per sq.ft. The deceased Sumanbai and the defendant Nos.1 and 2 have received an amount of Rs.60,00,000/- as an earnest amount as a part of the consideration and they agreed to execute the sale-deed on or before 27/09/2018.

04. In the meanwhile, on 21/11/2017, Sumanbai died and the defendant Nos.1 and 2 have promised to execute the sale-deed in favour of plaintiff by getting the consent of all her legal heirs i.e. the defendant Nos.3 to 6. However, the sale-deed could not be executed on or before 27/09/2018. In spite of such fact, due to financial needs of defendant Nos.1 and 2 they have received total amount of Rs.2,30,95,000/- out of the total consideration of Rs.3,05,20,000/- from the plaintiff from time to time against which they have issued the receipts. The plaintiff contended that he was ready to pay the remaining amount of Rs. 74,25,000/- to the defendants and requested them to execute the sale-deed by receiving the said amount however they have continuously avoided the same. In the meantime, the defendants, being the legal heirs of deceased Sumanbai have started their dispute inter se claiming the properties from S.No.226 and 227 and the defendant No.1 preferred a suit bearing No.595/2018 against the plaintiff and the rest of the

defendants for perpetual injunction before the C.J.J.D. Court at Udgir. The defendant Nos.3 to 6 have also preferred a Special Civil Suit No.80/2018 for partition before the C.J.S.D. Court Udgir without impleading the plaintiff as party to the suit and they have compromised the same in the absence of plaintiff, as his application for impleadment was rejected by the Court. In substance, the plaintiff contended that the defendants have started their interse dispute with a view to avoid the execution of sale-deed in favour of plaintiff and to avoid the agreement of sale even though he was ready and willing to pay the consideration amount and execute the sale-deed. Therefore he prayed for grant of temporary injunction as stated above.

05. The defendant Nos.1 and 2 vide their say at Exh.29 denied and disputed the contention of the plaintiff. It is their contention that the lands from S.Nos.226 and 227 including the suit property were the ancestral properties of their joint family and they were not exclusively owned by deceased Sumanbai. They have denied that the suit property was allotted to the share of defendant Nos.1 and 2 exclusively as well as the defendant Nos.3 to 6 have relinquished their shares in lieu of cash amount. It is their contention that the compromise effected in Special Suit No.21/2016 was not honoured by the plaintiff and defendant No.2 and therefore the special suit No.80/2018 was preferred. It was compromised on 12/03/2022. In respect of the agreement dated 27/10/2017, they have contended that the said agreement was never executed in favour of plaintiff either by the deceased Sumanbai or the defendant Nos.1 and 2. They submitted that the plaintiff had obtained blank

stamp papers from defendant No.2 against the financial assistance of Rs.20,00,000/- for the construction of house. The plaintiff had misused the said stamp papers for preparing the agreement of sale. They contended that in the year 2017 the market value of the suit property was more than Rs.3500/- per sq. ft. and therefore there was no question of executing the agreement of suit property at the rate of rs.1,090/- per sq. ft., as contended by the plaintiff. The plaintiff had obtained the stamp paper from these defendants and their mother by way of security for the abovesaid loan amount. As there was dispute between plaintiff and these defendants on the count of rate of interest on the said loan amount, the plaintiff misused the said stamp paper. They have also denied the receipt of part of the consideration amount from the plaintiff as well as the earnest amount. They have contended that after death of Sumanbai, the suit property as well as the properties in S.No.226 and 227 being the ancestral properties of their family were partitioned amongst the defendants being the legal heirs of deceased Sumanbai by way of compromise decree in Special Suit No.80/2018 and therefore they were never in exclusive possession of the same. In view of such fact, there was no reason for them to execute any agreement of sale of the suit property in favour of the plaintiff as contended by him and therefore there is no question of grant of injunction as prayed by them.

06. The defendant Nos.3, 5 and 6 vide their say (adopted by defendant No.4 vide pursis Exh.44) at Exh.37 also reiterated all the contentions of the defendant Nos.1 and 2 and prayed for dismissal of the application for grant of temporary injunction as

prayed by the plaintiff. They have contended that the defendant Nos.1 and 2 were not having any exclusive ownership over the suit property as it was the ancestral properties of their family and they were also having undivided share in the same. It is their contention that in the absence of any partition amongst themselves, the defendant Nos.1 and 2 had no right to execute any agreement in favour of plaintiff for the alienation of the suit property. The agreement to sale the suit property, if any, was executed by the defendant Nos.1 and 2 without receiving any consideration and under the influence of intoxication as these defendants are addicted persons therefore they prayed for dismissal of the application.

07. Considering the rival pleadings of the parties and documents produced in support thereof, following points arise for my determination to which, I record my findings thereon for reasons to follow :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff is having prima-facie .. case ?	In the negative.
2)	Whether the balance of convenience lies in .. favour of the plaintiff ?	In the negative.
3)	Whether the plaintiff will suffer irreparable loss, .. if injunction is not granted ?	In the negative.
4)	What order ?	.. As per final order.

REASONS

08. Heard learned counsel for plaintiff Shri. M.S. Chaudhari

and the Ld. Counsel for defendants Shri. A.K. Nikam for defendant Nos.1 and 2 and Shri. S.T. Patil for defendant Nos.3 to 6.

09. Before proceedings to discuss the facts of the case it must be stated that the grant or refusal of temporary injunction is an equitable relief based on the principles of justice, equity and good conscience. A person seeking equity must do equity. It is also settled position of law that a person seeking equitable relief must approach the Court with truthful facts so as to establish his entitlement to the discretionary relief of temporary injunction.

10. In support of the application, the plaintiffs have produced the agreement of sale dated 27/10/2017, the receipts of payments issued by the defendant Nos.1 and 2, the 7/12 extracts of S.Nos.226 and 227, plaint in S.C.S.No.21/2016, its compromise deed, plaint in RCS No.595/2018, plaint in S.S.C. No.80/2018, copy of notice issued by him to the defendants.

11. The plaintiff has also relied upon the ratio of judgment of Hon'ble Bombay High Court Prakash Govindrao Ahuja vs. Ganesh Pandharinath Dhonde arising out of appeal No.256/2013 dated 04/10/2016, to support his prayer of grant of injunction to restrain the defendants from creating third party interest in the suit property during pendency of the suit. Perused the same.

AS TO POINT NO.1:-

12. It needs reiteration that plaintiff is a person who is seeking grant of temporary injunction in the form of protection of

his possession and a prayer to restrain the defendants from creating third party interest in the suit property during pendency of the suit, on the basis of an agreement of sale dated 27/10/2017. It is his specific contention that the total consideration amount of the agreement was fixed at Rs.3,05,20,000/- out of which he has prayed Rs.2,30,95,000/- to the defendant Nos.1 and 2 against various receipts executed by them from time to time. It is also contended by him that the defendants have started their interse dispute to frustrate his contractual rights arising out of the said agreement and they have effected the mutation entries of the suit property on the basis of the compromise effected between them through the court decree in Special Civil Suit No.80/2018 passed by the C.J.S.D. Court Udgir. The plaintiff, by placing reliance on the agreement of sale dated 27/10/2017, also emphasized that he is in possession of the suit property in pursuance of the said agreement and in view of the fact that substantial amount of the agreement is already paid by him, he deserves the protection of this possession by way of grant of equitable relief of injunction so also the interim injunction in the form of restraining the defendants from creating third party interest.

13. To conclude that the plaintiff is having prima facie case, it must be stated that it is the prerequisite that the case of the plaintiff is based on a factual footing which is acceptable and legal one. Since the plaintiff has laid great emphasis on the agreement dated 27/10/2017, it requires a closer loop. The said agreement indicates that it is an unregistered document. Its nomenclature shows that it is an agreement of sale with delivery of possession. It is needless to state that such agreement requires compulsory

registration as the agreement is accompanied with the possession of the property. Proceeding further, inspite of its nomenclature, it nowhere specifies the delivery of actual possession of the suit property in favour of the plaintiff. Most importantly, the said agreement is executed in favour of the plaintiff as well as one Shivkumar Vaijanathappa Golange, which shows that plaintiff is not the sole purchaser of the suit property. The plaintiff has not explained the said facts either in his pleadings or in his argument before the Court.

14. Secondly, as per the contents of the said document, the sale-deed was to be executed on or before 27/09/2018 and inspite of fixing of such outer limit, the plaintiff, as per his own pleadings, has continued to pay the part of the consideration amount to the defendant Nos.1 and 2 till 08/03/2021 without insisting for the specific performance of the contract of sale of the suit property. The plaintiff has prima facie failed to explain his such conduct in a satisfactory manner to claim the equitable relief of injunction. It may not be out of place to note here that though the agreement was executed by the deceased Sumanbai and the defendant Nos.1 and 2, the plaintiff continued to pay the part of the consideration amount by obtaining the receipts from defendant Nos.1 and 2 separately and not in their joint capacity. In fact, even the said agreement lacks details of the suit property as admittedly the suit property is falling in S.Nos.226 and 227. Neither any map of the demarcation is attached to the agreement nor it is shown from any 7/12 extract of the S.Nos.226 and 227.

15. It is settled position of law that an agreement of sale in itself does not create any right in favour of the purchaser in respect of the property besides an obligation against the defendants to seek the specific performance of the contract. Therefore, in background of the said premises, the plaintiff could neither show his possession over the suit property nor his entitlement to seek the prayer in the form of restraining the defendants from creating third party interest during pendency of the suit. Hence I answer point No.1 in negative.

AS TO POINT NOS.2 AND 3:-

16. As far as the balance of convenience and sufferance of irreparable loss is concerned, it must be stated that the plaintiff is seeking protection of his possession on the basis of an unregistered vague document which nowhere concludes the delivery of the possession and on the contrary, as per his own case, the defendant Nos.3 to 6 have received the suit property to their share in view of the compromise decree effected through the Court in Special Civil Suit No.80/2018. The mutation entries produced by the defendant on record in the forms of 7/12 extracts, primarily indicates that the defendant Nos.3 and 6 are in possession of the suit property in pursuance of said decree. Therefore, there is no material on record to suggest that the plaintiff is in possession of the suit property on the basis of agreement of sale dated 27/10/2017 as contended by him. The mutation entries, based on a lawful decree, as it stands today, show that the defendant Nos.3 and 6 are entitled for the enjoyment of the said property and therefore neither the balance of convenience lie in favour of plaintiff nor he would suffer any irreparable injury on refusal of the injunction more particularly in

view of the fact that the defendant Nos.3 to 6 were not parties to the said agreement of sale of the suit properties. Hence, I answer point Nos.2 and 3 in negative and proceed to pass following order.

-:: ORDER ::-

- 1) Application Exh.5 stands rejected.
- 2) Costs in cause.

Udgir.
Date : 03.02.2023.

(R. B. Giri)
Civil Judge Senior Division,
Udgir.