

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO.: 19 OF 2015

Vijayrao S/o Ramrao Langhe Patil,
Age: 31 years, Occu.: Agril.,
R/o. CIDCO, Tq. & Dist. Aurangabad.
Through his G.P.A. Holder
Dattatray S/o Rameshwar Pawar,
Age: 36 years, Occu.: Agril.,
R/o. Plot No.13, N-9-H, CIDCO,
Ner T.V.Center, Tq. & Dist.
Aurangabad.

... **APPELLANT.**
[ORIG.PLAINTIFF]

VERSUS

1. Jagdish S/o Ashok Jaiswal,
Age: 22 years, Occu.: Student,
R/o. Harsool, Tq. & Dist. Aurangabad.
2. Smt. Ashabai W/o Ashok Jaiswal,
Age: 43 years, Occu.: Student,
R/o: As above.
3. Aarti W/o Sunil Jaiswal,
Age: 24 years, Occu.: Household,
R/o: As above.
4. Bhimdas S/o Chaju Rathod,
Age: 64 years, Occfu.: Agril.,
R/o Mandaki Road, Bakapur, Palashi,
Gat No.81, Tq. Dist. Aurangabad.

... **RESPONDENTS**
[ORIG.DEFENDANTS]

Mrs. Pooja V. Langhe, Advocate for the Appellant.
Mr. N. R. Thorat, Advocate for Respondent Nos.1 and 2.
Mr. Amol Gandhi, Advocate for Respondent No.4.

CORAM:- T. V. NALAWADE, J.
DATED:- 13th AUGUST, 2015.

JUDGMENT:

1. The appeal is filed against the order made on Exhibit-5 of Special Civil Suit No.223 of 2013 which was pending in the Court of Civil Judge, Senior Division, Aurangabad. In a suit filed by the appellant for relief of specific performance of contract the trial Court has refused the relief of temporary injunction. Both the sides are heard.

2. The suit is filed in respect of portion of one Acre of land Gat No.81 admeasuring 4 Acres 2 Gunthas, situated at Bakapur Palsi Tahsil and District Aurangabad. It is the case of plaintiff that Defendant No.4 Bhimdas was the owner of the suit property which is described in the plaint and he had executed a sale deed in favour of the predecessor in title of defendant Nos.1 to 3. It is contended that it was a nominal sale deed and it was created as a security for loan taken from Ashok Jaiswal by defendant No.4. It is the case of the plaintiff that the loan of Bhimdas was paid by plaintiff and then the agreement was executed under which Bhimdas and the successors of Ashok Jaiswal agreed to transfer entire portion of land Gat No.81 in favour of the plaintiff. It is contended that consideration was

fixed and under the agreement some cash amount and the amount of Rs.50,000/- by check was given to defendant Nos.1 to 3.

3. It is the case of the plaintiff that the sale deed was executed by defendant Nos.1 to 4 and when it was submitted for registration in the office of Sub Registrar, under some pretext they left the office. It is contended that subsequently the defendant Nos.1 to 3 refused to remain present before Registrar even when they had signed on the sale deed and so the plaintiff was required to file the suit for specific performance of the contract. It is contended that in the agreement, the real consideration was shown but in the sale deed the value of the property was shown as per the Government valuation but the entire consideration, which was agreed, was paid.

4. Defendant Nos.1 and 2 filed written statement. They admitted that the documents bear their signatures but they have contended that by deceiving them, their signatures were obtained by the plaintiff on those documents. They have admitted that the cheque of Rs.50,000/- was given to defendant Nos.1 to 3 by plaintiff. They have denied that the entire agreed consideration was given by plaintiff. They have denied that possession of the land was given by them to plaintiffs.

5. Defendant No.4, the original owner filed written statement

in which he had admitted the contentions made by the plaintiff.

6. In the trial Court the documents like copies of agreement of sale and the sale deed are produced by the plaintiffs. The execution of these documents is not disputed. Document of agreement shows that defendant Nos.1 to 3 were shown as executants but it was mentioned in the body of the document that defendant No.3 Aarti was not available as she was living in her matrimonial house and defendant Nos.1 and 2, her mother and brother, were present and they were accepting the consideration. The consideration was mentioned, which was a cheque of the amount of Rs.50,000/- and this consideration is admittedly received by defendant Nos.1 and 2. The sale deed shows that it is signed by defendant Nos.1 to 3. In the sale deed there is a mention that the executant had received the entire consideration amount and the persons who had given the consent had also received the consideration. The possession was given and there was no dispute of any kind between the parties. This document was executed on 26th June, 2012. The agreement of sale was executed on 30th May, 2012 and the stamp paper on which the agreement was written was purchased by Jagdish, defendant No.1.

7. It is the contention of the plaintiff that under the aforesaid documents possession was given. The 7/12 extract shows that mutation was already effected in respect of the remaining

portion which was transferred by defendant No.4 and the mutation is not made only in respect of the property which was standing in the name of defendant Nos.1 to 3 as the sale deed is not registered.

8. The learned counsel for the Appellant placed reliance on some reported cases like **AIR 2004 SC 4609 [Rame Gowda (D) by L.Rs. V/s M. Varadappa Naidu (D) by L.Rs. and another]; 2014 (2) Bom.C.R. 828 [Rehab Housing Pvt. Ltd. V/s Vishwanath Pandurang Patil & Ors.]; 2011 (7) ALL MR 255 [Pralhad Jaganath Jawale & Ors. V/s Sau. Sitabai Chander Nikam & Ors.]** (Bombay High Court), **2011 (6) ALL MR 15 [Baban Anantrao Naik V/s Sau. Pramila Uttamrao Yenare & Anr.]**. This Court and the Supreme Court have discussed the circumstances on the basis in which the relief of temporary injunction can be given to protect the possession. There cannot be any dispute over the observations made. In the provisions like Order XXXIX Rules 1 and 2 Civil Procedure Code itself the requirements for getting the relief are mentioned.

9. The order of the trial Court shows that it has made much out of the circumstance that the agreement of sale was not signed by defendant No.3. In the agreement itself it was made clear by defendant Nos.1 and 2 that they were representing defendant No.3 and she was living in the matrimonial house at

the relevant time. In this regard the circumstance that she has signed on the sale deed needs to be kept in mind. There is some discrepancy in the consideration amount mentioned in the agreement of sale and document of sale but there is explanation in the pleading in that regard. The case of the defendant Nos.1 to 3 that consideration was not paid can be considered during trial and at present there is a mention in the aforesaid documents that the consideration was received by them and only after that they had signed on the sale deed. These circumstances and admissions of the defendants are sufficient to make out prima facie case in favour of plaintiff. As documents are executed and there is a record to show that the possession was also given, the balance of convenience lies in favour of the plaintiffs. For protecting their possession the relief needs to be given and for preventing the defendants to make transactions in respect of the suit property the relief of injunction needs to be given. Said reliefs are claimed by the plaintiff. This Court holds that the trial court has committed error in refusing the relief of injunction.

10. In the result, the appeal is allowed. The order under challenge is hereby set aside. The application filed for relief of temporary injunction is allowed and injunction as prayed to protect the possession and to prevent the

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defendants from alienating the property and from creating third party interest in the suit property is granted.

[T. V. NALAWADE, J.]

Dated:13/08/2015.
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