

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

**APPEAL FROM ORDER NO. 104 OF 2015  
WITH  
CA/15044/2015 IN AO/104/2015**

Abdul Hamid Abbas Qureshi  
Age 61 years, Occ: Agriculturist  
& Business, R/o Gurav-Pimpri,  
Taluka Karjat,  
District Ahmednagar.

... Appellant  
(Ori.Plaintiff)

Versus

1) Shaikh Majid Shaikh Dagdu  
Age 72 years, Occu: Agriculturist,  
R/o Thete Gavhan, Taluka Dharur,  
District Beed.

2) Shaikh Daud Sk. Karim,  
Age 50 years, Occu: Agriculturist,  
R/o Bombay Foot Wear,  
Kharda Road, Jamkhed,  
Taluka Jamkhed,  
District Ahmednagar.

... Respondents  
(Orig.Deft. Nos. 1 & 2)

.....  
Advocate for Appellant : Mr. S. D. Kulkarni  
Advocate for Respondent Nos. 1 and 2 : Mr. M. A. Kulkarni  
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**CORAM : V.K. JADHAV, J.  
DATED : 20<sup>th</sup> April, 2016**

**ORDER :**

1. Being aggrieved by the order dated 20.02.2015 passed below  
Exh.5 by learned Civil Judge, Senior Division, Shrigonda, in Special  
Civil Suit No. 31 of 2014, the original plaintiff has preferred this

appeal.

2. Brief facts giving rise to the present appeal are as follows:

The appellant-plaintiff has instituted a suit for specific performance of contract against respondents-defendants in respect of land Gat No. 1446 situated at Village Rashin Taluka Karjat District Ahmednagar. Respondent-defendant No.1 had purchased the suit land under registered sale deed dated 26.04.2012 from one Bajirao Ganpat Raut and others and he became the owner in possession of the suit land on the basis of said sale deed. Respondent-defendant No.1 intended to develop the suit land, however, he was not in a sound financial position enough to develop the said land on his own. Consequently, respondent-defendant No.1 put the suit property for sale and accordingly, appellant-plaintiff had approached him. Appellant-plaintiff further pleaded that he had offered to purchase the said property for a consideration of Rs.1,09,00,000/- and out of agreed consideration, an amount of Rs.40,00,000/- was paid in cash and an amount of Rs.10,00,000/- was paid by way of cheque in the name of respondent-defendant No.2 on 13.02.2014. Pursuant to the said agreement, possession was also delivered to the appellant-plaintiff, and accordingly, appellant-plaintiff obtained certain permissions from the State Government to construct a bridge for

development of the said land. The appellant-plaintiff is, however, constrained to institute the suit for specific performance of contract since respondent-defendant No.1 has refused to execute the sale deed. The appellant-plaintiff has also filed application Exh.5 for issuance of order of temporary injunction restraining thereby the respondents-defendants from causing obstruction to his peaceful possession over the suit property as well as from creating third party interest or alienating or selling the suit property till disposal of the suit. Learned Civil Judge, Senior Division, Shrigonda, by its impugned order dated 20.02.2015 passed below Exh.5, partly allowed the application and thereby restrained the respondents-defendants temporarily from alienating, selling or creating third party interest in the suit property till decision of the suit. Being aggrieved to the extent of denial of relief of temporary injunction restraining defendants from causing obstruction to the peaceful possession of appellant-plaintiff over the suit land, the appellant-plaintiff has preferred this appeal.

3. Learned counsel for the appellant-plaintiff submits that respondent-defendant No.1 executed two agreements in his favour i.e. the *Sathekhat* dated 13.02.2014 and the extension deed dated 26.06.2014 and agreed to sale the disputed land Gat No. 1446 situated at village Rashin, Taluka Karjat, District Ahmednagar

admeasuring 1 H 21 R by accepting Rs.50,00,000/- by way of part consideration at the time of execution of agreement (*Sathekhat*) dated 13.02.2014. Learned counsel submits that on the date of execution of agreement (*Sathekhat*) dated 13.02.2014, appellant-plaintiff was also put in possession of the disputed land. Learned counsel submits that the agreement (*Sathekhat*) dated 13.02.2014 has been executed before the notary and an amount of Rs.40,00,000/- has been paid in cash to respondent/defendant No.1 and further, a cheque of Rs.10,00,000/- came to be issued in the name of defendant No.2, since respondent-defendant No.1 was not having a bank account. Learned counsel submits that the appellant-plaintiff has obtained permission from the State Government to construct a bridge, and accordingly, appellant-plaintiff has incurred expenses to build the said bridge. Learned counsel further submits that after noticing that the land is directly attached to the highway and its price has gone up, respondent-defendant No.1 has refused to execute sale deed in favour of appellant-plaintiff. Learned counsel submits that appellant-plaintiff has also issued a notice dated 22.09.2014 through his counsel, thereby calling upon respondent-defendant No.1 to execute sale deed. Learned counsel submits that defendants are trying to sale the suit property and also trying to obstruct the peaceful possession of appellant-plaintiff over the suit property. Learned counsel submits that even though the *Sathekhat*

dated 13.02.2014 and the extension deed dated 26.06.2014 are not registered one, they can be relied upon for collateral purposes. Learned counsel submits that there is specific recital in *Sathekhat* dated 13.02.2014 about delivery of possession of the suit property to the appellant-plaintiff. Learned counsel submits that appellant-plaintiff has a strong *prima facie* case and the balance of convenience lies in his favour since he has paid Rs.50,00,000/- as part consideration and also incurred expenses for development of the suit property. Learned counsel submits that, in case appellant-plaintiff is dispossessed, he would face irreparable loss. Learned counsel submits that the trial court has not considered the same and refused to protect possession of plaintiff over the suit land.

4. Learned counsel for the appellant, in order to substantiate is submissions, placed reliance on the decisions in following cases:

- 1) ***Chaudhary Abdul Majid Shahadat and others vs. Shenaz Abdulla Shahadat and others***, reported in ***2010 (7) Mh.L.J. 167***,
- 2) ***M. Gurudas and others vs. Rasaranjan and others***, reported in ***2007 (1) Mh.L.J. 898***,
- 3) ***Shamrao Ganpat Chintamani vs. Kakasaheb Laxman Gorde***, reported in ***2008 (2) Mh.L.J. 819*** and

- 4) ***Gorakh Mahadev Survase and others vs. Narayan Balu Dhombe since deceased through his LRs. and others***, reported in ***2012 (2) Mh.L.J. 215***.

5. Learned counsel for the respondents-defendants submits that the alleged *Sathekhat* dated 13.02.2014 and the extension deed dated 26.06.2014 are not registered one and the same cannot be relied upon for any purposes. It is further contended that appellant-plaintiff has instituted the suit for specific performance of contract after issuing the alleged legal notice dated 22.09.2014. Learned counsel submits that the contents of said notice and the pleadings are inconsistent with each other. Learned counsel submits that there is no whisper about delivery of possession in the alleged legal notice issued to respondents-defendants. Learned counsel submits that the trial court has therefore, rightly refused to grant relief of temporary injunction in favour of appellant-plaintiff to protect his alleged possession over the suit property. Learned counsel submits that appellant-plaintiff has no concern with the suit property. After sanction of layout plan of the suit property, respondent-defendant No.1 was intending to sale those plots. Thus, the appellant-plaintiff approached him and assured to sale those plots on commission basis. By taking disadvantage of illiteracy of respondent-defendant No.1, appellant-plaintiff got executed the deeds and respondent-defendant No.1 came to know about the said deeds only after receiving legal notice

dated 22.09.2014. Learned counsel submits that in fact, respondent-defendant No.1 himself paid Rs.33,000/- to the Government to obtain permission for Non-Agriculture use of suit property and also constructed a bridge by incurring expenses. Learned counsel submits that appellant-plaintiff has failed to prove a *prima facie* case. Balance of convenience does not lie in his favour. There is no question of facing any irreparable loss by the appellant-plaintiff. Learned counsel submits that no interference is required in the impugned order and the appeal is liable to be dismissed.

6. So far as alleged *Sathekhat* dated 13.02.2014 is concerned, respondent-defendant No.1, though denied the nature of said document, admitted its execution. If a transaction has been reduced in writing, either by agreement of the parties or by requirement of law, the writing becomes the exclusive memorial thereof and no evidence shall be given to prove the transaction except the document itself. The best evidence about the contents of a document is the document itself. No evidence of any oral agreement or statement shall be admitted as between the parties to any such document for the purpose of contradicting, varying, adding to or subtracting from, its terms. However, there are six exceptions to this. It is for respondent-original defendant No.1 to prove during the course of full-fledge trial of the suit that, his case falls under those exceptions. The alleged

*Sathekhat* dated 13.02.2014 is not a registered document. At this stage, it is not desirable to comment on it, however, it also appears from the contents of the legal notice that there is no reference to the delivery of possession of the suit property to the appellant-plaintiff. It appears from the concluding paragraph of the legal notice that respondent-defendant No.1 is called upon to clear all the encumbrances, if any, over the suit land or any part thereof within the agreed period and further to satisfy the appellant-plaintiff about the clear and marketable title over the suit land, and if respondent-defendant No.1 fails to comply with the aforesaid requisitions, then he will be liable to return the amount as mentioned in the alleged *Sathekhat* dated 13.02.2014. Appellant-plaintiff has shown the aforesaid legal notice as one of the cause of action to institute the suit for specific performance of contract. It is premature at this stage to draw any inference about non-delivery of possession on the basis of the contents of said legal notice, however, it appears that the appellant-plaintiff has failed to prove a *prima facie* case for issuance of order of temporary injunction to protect his possession over the suit land. Further, the balance of convenience also does not lie in favour of appellant-plaintiff and he is not likely to face any irreparable loss as such. I do not find any fault in the impugned order passed by the trial court. There is no substance in the appeal. Hence the following order:

**ORDER**

- I. The Appeal From Order is hereby dismissed.
- II. In view of dismissal of Appeal From Order, pending Civil Application also stands disposed of.

**( V.K. JADHAV, J. )**

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