

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

**APPEAL FROM ORDER NO.52 OF 2023**

1. Hiralal s/o Prabhudas Paraswani,  
Aged 63 years, Occu : Business,
2. Prakash s/o Prabhudas Paraswani,  
Aged 65 years, Occu : Business,
3. Rajani W/o Prakash Paraswani,  
Aged 59 years, Occu : Household,
4. Rekha w/o Hiralal Paraswani,  
Aged 57 years, Occu : Household,

All R/o Plot No.140, Sindhi Colony,  
Aurangabad 431 005.

**... Appellants.**

Versus

1. Rekha wd/o Lalitkumar Rathi,  
Aged 60 years, Occu. Business,  
R/o "Lalit", Plot No.A-2, N-1, CIDCO,  
Aurangabad.
2. Prajakta w/o Sanil Birla,  
Aged 35 years, Occu. Household,  
R/o R-16, Rathi Planet, Opposite Airport,  
Chikalthana, Aurangabad-431 005.
3. Pranita w/o Pradyumna Malpani,  
Aged 32 years, Occu. Household.  
R/o Shree Sadan, Opposite Laddha Complex,  
Behind Chitra Talkies,  
Amravati-444601.
4. Pranav s/o Lalitkumar Rathi,  
Aged 18 years, Occu. Student,  
R/o "Lalit", Plot No.A-2, N-1, CIDCO,  
Aurangabad.
5. Virika Developers, A Partnership Firm,  
Through its authorized Signatory and Partner,

Sunil Hanumandas Malpani,  
Age 56 years, Occu. Business,  
R/o Plot No.4/5, "Vaibhav", Surana Nagar,  
Jalna Road, Aurangabad. ... **Respondents.**

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Advocate for Appellants : Mr. Rajendrrraa Deshmukkha (Senior  
Advocate) a/w Ms. Ashwini Sahasrabudhe i/b Mr. Chhabda  
Ranbir L.

Advocate for Respondent No.5 : Mr. Anand Bhandari.

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**CORAM : S. G. MEHARE, J.**

**DATE : 13.09.2023**

**ORAL JUDGMENT:-**

1. Heard finally by consent of the parties at the admission stage.

2. The appellants/plaintiffs have impugned the order of the learned 2<sup>nd</sup> Joint Civil Judge Senior Division, Aurangabad, passed below Exh.34 in Special Civil Suit No.626 of 2022, dated 17.06.2023, rejecting the temporary injunction application.

3. The brief facts of the case were that the plaintiffs had filed a suit for Specific Performance of Contract based upon the oral agreement to sell with deceased Lalitkumar Rathi. The oral agreement was supported with an undated receipt. It has been claimed that the contents of the said receipt were an agreement to sell the suit plot. Deceased Lalitkumar Rathi had

acknowledged the full consideration. The said receipt is admittedly undated. However, the plaintiffs have claimed that it was the outcome of an agreement to sell dated 31.03.1997. The plaintiffs further have a case that Lalitkumar Rathi was a builder, and the present plaintiffs were his close friends. They had an understanding of the friendship. Lalitkumar Rathi died in the year 2019. Thereafter, in the year 2020, for the first time, the plaintiffs felt it necessary to get the sale deed executed from his legal heirs. Therefore, the plaintiffs approached the wife of Lalitkumar Rathi. Initially, she promised to execute the sale deed. She prolonged the execution of the sale deed because she had to obtain the Letter of Administration from the Court. Subsequently, her promises proved dry. On 01.05.2022, the plaintiffs learnt from the brokers that respondents, i.e. the legal heirs of Lalitkumar Rathi, intended to transfer the suit plot bearing plot No.4C situated at Connaught, which was under the control and management of the CIDCO. Knowing about the intention of the legal heirs of Lalitkumar Rathi, a notice through the lawyer was issued to them on 17.05.2022 and within a short period thereafter, the suit for Specific Performance of Contract was filed on 07.06.2022, and then an application for a temporary

injunction under Order XXXIX Rule 1 of the Civil Procedure Code was filed on 26.04.2023.

4. The present respondent No.5 is the purchaser of the suit property from the legal heirs of Lalitkumar Rathi. Hence, he was added as a party. The legal heirs of Lalitkumar Rathi had come with a case that since they have transferred a suit property to present respondent No.5, they have no concern with the suit. The interest was devolved upon present respondent No.5. Therefore, he is the contesting party. Respondent No.5 accepted the entire liability and contested the suit.

5. Respondent No.5 has filed the reply below Exh.38 to the application for temporary injunction. He has denied any oral agreement. He has strongly opposed the temporary injunction application, contending that whatever documents relied upon by the plaintiffs do not disclose that Lalitkumar had any time there was an intention to transfer the suit land to them. The property is under the control and management of CIDCO. There are some conditions to be fulfilled for transferring the suit property. His contract with the legal heirs of deceased Lalitkumar Rathi was legal, proper and correct. On 09.05.2022, a notarized deed of assignment was executed in

his favour. Then, he moved an application to the CIDCO on 11.06.2022 for the transfer order and permission for registration of the deed of assignment. The consideration of Rs.4,45,00,000/- had been paid to the heirs of Lalitkumar Rathi. Thereafter, a registered deed of assignment was registered on 19.07.2022. The necessary permission to raise the construction has also been obtained, and the construction was started in the month of January 2023. For the last eight months, construction has been going on. In sum and substance, he has the claim that he got the legal and valid interest and title over the suit plot. He has invested a huge amount and put the suit property for development. The appellants have no *prima facie* case. The balance of convenience does not tilt in his favour, and no irreparable injury would be caused in the event of a refusal of the injunction. On the contrary, if the injunction is granted, respondent No.4 would suffer irreparable loss, and the development would be stopped. Hence, he prayed to dismiss the appeal.

6. A bunch of documents from both sides have been placed on record. Various legal issues and factual issues have been raised before the Court. Section 20 of the Specific Relief Act has also been referred to. Apart from the ingredients of Order

XXXIX Rule 1 of the Civil Procedure Code, it has been emphasized that the conduct of the parties favours the plaintiffs to get the injunction.

7. Before advertng to the facts, the ingredients of Order XXXIX Rule 1 would be discussed first. To seek an injunction under Order XXXIX, the primary duty of the person claiming injunction of any nature is to prove by an affidavit or otherwise (a) that the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree, or (b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors; or (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury or loss to the plaintiff in relation to any property in dispute in the suit. On proving these ingredients, the Court may grant temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property, or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute until the disposal of the suit or until further orders.

8. The law is well settled that granting an injunction is a discretionary power of the Court. However, discretion is to be used judiciously. The Court has to maintain the balance in deciding the rights of the respective parties. The Court should grant a temporary injunction if the effect of non-granting such an injunction will defraud the plaintiffs forever the right claimed by them in the suit. The relief of the injunction is a relief in equity. The party seeking the injunction has to *prima facie* satisfy the Court that his or her right has been involved in the suit property, and such right has been violated or likely to be invaded. The prohibitory order should not affect the rights of the opponent. The well-established principle granting the injunction is that the party claiming the injunction has to prove that he has a *prima facie* case, the balance of convenience tilts in his favour and in the event of a refusal of the injunction, he would suffer irreparable injury.

9. As discussed above, the suit of the plaintiffs is based upon an oral agreement to sell, which was about 25 years old. Till the predecessor in the title of the suit plot was alive, everything was going well, but soon after his death, all these complications arose.

10. Learned senior counsel for the appellants/plaintiffs has taken this Court through various papers. He has vehemently argued that in pursuance of an oral agreement to sell dated 31.03.1997, one receipt was executed that is placed on record. He would submit that the deceased Lalitkumar Rathi, during his lifetime, had received the entire consideration. They had a close friendship. Hence, the plaintiffs had trust in him. They never thought that situation would arise. He has also argued that the suit plot was actually in the possession of the plaintiffs. Therefore, tax receipts were in their possession. Those tax receipts have been referred to. He would further submit that the deceased Lalitkumar was a seasoned businessman. He had executed the Will, but since he was knowing about the transaction with the plaintiffs, he consciously did not add the suit property to his Will. However, after the death, the respondents had moved an application for the Letter of Administration. Initially, the suit property was not described therein. Thereafter, the corrections were moved, and the Court allowed the correction of the property description in the Letter of Administration. The legal heirs of Lalitkumar Rathi were contacted. They had promised the plaintiffs that they would get the Letter of Administration and the sale deed would be executed thereafter. On 01.05.2022, they learnt

about the intention of the legal heirs of the Lalitkumar not to transfer the suit land in pursuance of the agreement to sell dated 31.03.1997. He emphasized and assailed the deed of agreement between the legal heirs and the present respondents and argued that it was a false and concocted document created to defraud the plaintiffs. The said document was notarized. Since the document does not bear the stamp of a Notary as required under the Notary Act, it was a sham and bogus document created in collusion by the legal heirs of Lalitkumar Rathi and present respondent No.5. For comparison, he has referred to his reply, which was a notarized document. In short, he emphasized that a prescribed stamp is to be affixed on every notarized document. But, the so-called deed of agreement dated 09.05.2022 does not bear the stamp of a notary. He reserves his right to take appropriate action against the concerned. However, he referred to these documents to point out how the conspiracy has been set out by the legal heirs of Lalitkumar Rathi and the present respondent No.5 to violate his legally executable right, which was in existence.

11. Further, he would submit that not only Lalitkumar Rathi, but the family of the plaintiffs were also knowing that the suit plot was their family property. Therefore, in a compromise

decree, the suit plot was devolved upon the present plaintiffs. That compromise was taken place in the year 2012. In a nutshell, his argument revolved around the conduct of the vendor and the present respondent No.5. The present contesting respondent No.5 is not the bona fide purchaser. He has consciously purchased the disputed property. Therefore, he can not claim that he may suffer irreparable injury if the injunction is granted in favour of the plaintiffs. The conduct of the legal heirs of Lalitkumar Rathi could be seen from their conduct of not replying to the legal notice served upon them before the suit. The deed of assignment dated 09.05.2022 was an unregistered document. It was a back-dated document. He would submit that in view of the amended Section 20 of the Specific Relief Act, a discretion that was lying with the Court to grant a decree has specifically been withdrawn, and the Courts are bound to pass a decree for Specific Performance of Contract about transfer of the immovable property. He has heavily relied upon the view taken by the Hon'ble Supreme Court in the case of ***Mandali Ranganna Vs. T. Ramachandra ; 2008 AIR SCW 3817***. In the said case, the Hon'ble Supreme Court observed that while considering an application for a grant of injunction, the Court will not take into consideration the basic elements in relation thereto viz., the existence of a *prima facie* case,

balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequence depending upon nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of parties. For the said purpose, application of mind on the part of the Courts is imperative. He has specifically referred to paragraph No.24 of the said judgment that would be discussed in later part. He also referred to the judgment of Bombay High Court *Subhash Dhanraj Sankla Vs. Kajkhushroo @ Kaki Phiroze Noble ; 2014(1) LJSOFT 108*. Wherein it has been held that oral agreement is enforceable in law. In the said case, the agreement to sell was based upon the right created by registered Will Deed.

12. Per contra, the learned counsel Mr. Bhandari for the contesting respondent/the purchaser has vehemently argued that the transfer/sale or conveyance was legally in favour of the present respondent. The due procedure for transferring the

interest has been completed. The CIDCO has confirmed the sale and registered deed to assignment have been executed in favour of the present respondent. The so-called receipt, which plaintiffs heavily relied upon, does not bear the date and stamp. Without admitting the said document, even if that document is considered, the plaintiffs never complied with the conditions for transfer. The tax receipt, which the plaintiffs relied upon, made part of the record, does not bear the plot number. The name of Mr. and Mrs. Paraswani appears to have been interpolated in those receipts. An inquiry was made about the genuineness of the tax receipts from the Office of CIDCO. The CIDCO office informed recently that no such receipts were issued by their Office.

13. The suit plot was specifically identified. Hence, there is no question for the Taxing Authority to fill up the column of the property with the words 'new plot'. It was never a new plot. It was a part and parcel of plot No.4. Be that as it may, after around 25 years, the plaintiffs woke up to execute their rights, and the so-called receipts relied upon by him would not be the nexus of the case of agreement to sale with deceased Lalitkumar Rathi. The plaintiffs have no explanation for what happened soon after the death of Lalitkumar Rathi, and the

plaintiffs felt it necessary to have the transfer of the suit plot. The conduct of the plaintiffs goes against them. Keeping silence for such a long period itself is evidence that there was no agreement to sell between the plaintiffs and deceased Lalitkumar. Even the so-called payments mentioned in the said receipts (undated) have not been proved. No record of investment of a huge payment has been maintained by the plaintiffs, who are also businessmen. In sum and substance, his argument would be the present respondent has got a clear title by adopting the procedure for transfer by the CIDCO Authority. He has a better title than the appellants. So-called clause K in the compromise in the family of these plaintiffs was never communicated to the deceased Lalitkumar Rathi. It was a document between their families. That would not affect the rights of the present respondent. The conduct of the plaintiffs itself shows that they were not diligent. The cause of action for filing the suit was 01.05.2022. However, a suit was filed on 07.06.2022. Along with the suit, no temporary injunction application was filed. The temporary injunction application was subsequently filed on 26.04.2023. Such conduct of the plaintiffs shows that they were not diligent in protecting their rights. They never disclosed their apprehension of creating third-party interest in a suit plot. However, a notice was issued

to create the evidence on 17.05.2022 and immediately filed the suit. As far as non-mentioning the suit plot in the Will by Lalitkumar is concerned, the law does not mandate that Will should dispose of every property. Lalitkumar Rathi might have an intention to keep the suit plot joint. In no way avoiding or deleting the mention of the suit plot in his Will would benefit the plaintiffs. He would submit that the property is under development. Construction is going on. If the injunction is granted, the defendants would suffer irreparable loss. He would also submit that otherwise, the right of plaintiffs has been protected under Section 52 of the Transfer of Property Act. There is absolutely no bar to alienate or transfer the property during the pendency of the suit. Such transactions are always subject to the decision of the suit. Bearing in mind these provisions of law again it cannot be said that the appellants will suffer irreparable loss in the event of refusal of the temporary injunction. He also argued that a written reply is unnecessary since this appeal is under Order XLIII Rule 1 of the Civil Procedure Code. The reply was already filed before the Civil Judge. The impugned order rejecting the temporary injunction is legally correct and proper and does not warrant interference at the hands of this Court.

14. Learned counsel for the contesting respondent No.5 relied upon the cases of *Dalpat Kumar and another Vs. Prahlad Singh and others; AIR 1993 Supreme Court 276* and *Wander Ltd. And another Vs. Antox India P. Ltd.; 1990 Supreme Court Cases*, in which it has been held that usually the prayer for grant of an interlocutory injunction is at the stage when the existence of the legal right asserted by the plaintiff and its alleged violations are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The interlocutory remedy is intended to preserve his *status quo*, the rights of the parties, which may appear to have a *prima facie* case. Further, he relied upon the case of *Mannalal Vs. Upendrakumar and others; 2009 SCC OnLine Bom. 1809*. It was a case of oral agreement to sell. The three settled tests granting the injunction have been discussed in the said case. In the said case in paragraph No.14, this Court has observed that the assessment of *prima facie* case in a suit for Specific Performance of Contract, based upon the oral agreement, has to be different than such a suit, based upon the written agreement. In a suit based upon the written agreement, the agreement placed on record and its contents, become significant and the same can be read along with averments made in the plaint. The written agreement placed on record,

discloses the names of the parties, their place of residence, place of agreement, consideration, description of the property and other terms and conditions of contract, which the parties have entered into. Normally, in such a suit, what is required to be seen, is the interpretation of the terms of contract and compliance of it. It becomes easier for the Court to reduce the controversial position. This is not the advantage, in case of suit based upon the oral agreement. The Court is at loss to know the *prima facie*, undisputed factual position, which can only be ascertained, by reading the averments made in the plaint and the stand taken in written statement. In a suit for specific performance of contract based upon the oral agreement, the averments made in the plaint carry great weight and significance in ascertaining even a *prima facie* case. The averments are required to be strictly construed and heavy burden lies on the plaintiffs to establish the *consensus ad idem*. The Court has to proceed cautiously and read the averments minutely, to understand the exact nature of case, to find out, whether *prima facie* case is made out or not. The averments in the plaint, must inspire the confidence of the Court, as to credibility of the plaintiff and truthfulness of the averments. The inconsistency in the averments made in the plaint, lack of material facts and particulars or vagueness and unspecific

averments in plaint etc. would be the instances, which shall be considered against the plaintiff, while judging the *prima facie* case. The very first thing to find out the *prima facie* case is whether, the plaint averments contain the material facts and particulars establishing the complete chain of events disclosing the cause of action. It has to be borne in mind that even the absence of single material fact, entails the consequences of rejection of plaint, leave apart the question of making out the *prima facie* case. Even if the material facts are pleaded and material particulars are absent or if the averments in the plaint are inconsistent, it can be said that the plaint averments do not make out a *prima facie* case.

15. In reply, learned senior counsel for the appellants/ plaintiffs would argue that a stamp on the so-called receipt acknowledging the entire consideration is not required. The deceased had acknowledged the entire consideration. Hence, no separate evidence is required that the consideration was paid. The receipt on page 169 was in the context that no report of forgery was lodged by the legal heirs of Lalitkumar Rathi and denied that it was a forged document. Consciously not including the suit plot in his Will was a favourable circumstance for the plaintiffs to establish that an agreement to

sell was executed and the right was created in his favour. He would further argue that as the plaintiffs were in possession, the tax receipts were with them. Probably, the CIDCO might have assessed the tax for the suit plot for the first time. Hence, a new plot was mentioned therein. Section 20 of the Specific Relief Act is prospective. However, in the case of ***Smt. Katta Sujatha Reddy and another Vs. Siddamsetty Infra Projects Pvt. Ltd and others; 2022 LiveLaw (SC) 712*** (relied upon by the contesting respondent) was on the factum that the suit was filed in the year 2002 i.e. before the amendment. Therefore, the Supreme Court held that it would not be applicable to the said case. However, in this case, the suit has been filed after the amendment. Hence, Section 20 of the Specific Relief Act would apply.

16. The facts pleaded in the plaint and written statement have been reiterated in the arguments advanced by the respective learned counsels. Admittedly, the receipt on the basis of which the claim of oral agreement to sell is based does not bear the date. It is also not in dispute that till Lalitkumar Rathi was alive, the plaintiffs never felt it necessary to execute the transfer by following the due procedure of law. The so-called receipt does not bear the name in whose favour the

transaction was done. The said document reveals that the payments were made by cheque of the Janta Bank. However, there is nothing on record to show that the plaintiffs issued any such cheques to the deceased Lalitkumar Rathi. Production of such documents was possible for them to make their case strong. The plot to be purchased was mentioned in the said receipt as in block No.4 opposite to CIDCO Block No.7D. One of the boundaries, i.e., on the southern side, it was mentioned that the so-called plot is attached to block No.4C and exactly this plot 4C is claimed to be the suit plot. Here, it raises doubt about the plot which was agreed to be sold. Even on the East, it has been described that there is a road of part of block No.4C and 7D. The identification of the suit plot as per the said receipt can be correctly identified during the trial on merit. But *prima facie*, it creates a doubt about the suit plot.

17. The law is undisputed that the suit for the specific performance of a contract can be entertained on an oral agreement to sell. Section 54 of the Transfer of Property Act provides that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. It is clear that the sale

transaction may take place on terms settled between the parties. The plaint does not bear the specific argument as regards the terms of the agreement, though the agreement was oral. Barely it has been pleaded that the deceased Lalitkumar Rathi had offered to transfer the leasehold rights in the suit plot to plaintiff No.1, namely Hiralal Prabhudas Paraswani and one Meena Paraswani for a consideration amount of Rs.11,81,000/-. Further, it has been pleaded in paragraph No.7 that the plaintiff bears the transfer expenses, and the plaintiffs shall do all the procedures for transferring the suit plot. There were no specific terms of agreement to sell. The claim of the plaintiffs is around 25 years old. Till the death of Lalitkumar Rathi, no actions were taken by the plaintiffs. However, soon after his death, the plaintiffs felt it necessary to have the transfer of the suit plot in their favour. Hence, they approached the legal heirs of the deceased Lalitkumar Rathi and came up with a case that they were avoiding the contract.

18. The circumstances which are tried to put before the Court that the legal heirs of deceased Lalitkumar gave the dry promises of transferring the suit plot to them after obtaining the letter of administration, no reply to the notice appears not sufficient to believe that the plaintiffs have proved *prima facie*

case. Soon after getting the knowledge of creating a third-party interest in the property, no injunction restraining any such transaction was filed along with the plaint. The plaintiffs appear not diligent in protecting their interests.

19. After having gone through the plaint, considering the arguments advanced at length, the Court is not satisfied that the plaintiffs have established the *prima facie* case. Since the property was governed by a specific procedure of transfer and the valid and legal title has been transferred in favour of the contesting respondent on a consideration of Rs.4,45,00,000/-, the balance of convenience tilts in his favour. The suit was not filed within a reasonable period. Long waiting for 25 years to get the sale deed executed during the lifetime of Lalitkumar Rathi shows that the plaintiffs were not interested in getting the suit land transferred. Section 52 of the Transfer of Property Act does not prohibit the transfer of immovable property during the pendency of the suit. Such transfer is always subject to the decision of the suit. Therefore, the rights and interests of the plaintiffs in the suit property have been protected under Section 52 of the Transfer of Property Act. In no case, the appellants would suffer irreparable loss if the injunction is refused.

20. The impugned judgment and order of the learned Civil Judge Senior Division is legally correct and proper. The Court is not satisfied that the appellants/plaintiffs have a case for temporary injunction.

21. For the above reasons, the appeal stands dismissed.

22. No order as to costs.

**(S. G. MEHARE, J.)**

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vmk/-