

Nasir Khan Vs. Haroon Khan

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Court : Karnataka

Decided On : Jan-12-2024

Judge : H.P.Sandesh

Appeal No. : MFA 6446/2023

Appellant : Nasir Khan

Respondent : Haroon Khan

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE12H DAY OF JANUARY, 2024 BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH M.F.A. NO.6446/2023 (CPC) BETWEEN:

1. . NASIR KHAN S/O LATE O.AHAMED KHAN, AGED ABOUT52YEARS, AGRICULTURIST, R/O URGADUR, MADARIPALYA, SHIVAMOGGA - 577203. APPELLANT (BY SRI D.R.RAVISHANKAR, SENIOR COUNSEL FOR SRI LEELESH KRISHNA, ADVOCATE) AND:

1. . HAROON KHAN S/O KHALANDER KHAN, AGED ABOUT42YEARS, R/O NO.125-6, 6TH CROSS, SULEBYLU, URGADUR VILLAGE, SHIVAMOGGA TALUK-577 203. 2 . CHAND PASHA S/O BABU SAB, AGED ABOUT42YEARS, R/O. 3RD CROSS, LEFT SIDE, TIPPU NAGARA, SHIVAMOGGA-577 202. RESPONDENTS (BY SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR SRI K.N.MAHABALESHWAR RAO, ADVOCATE C/R1 & R2) 2 THIS M.F.A. IS FILED

U/O43RULE1r) R/W SECTION151OF CPC, AGAINST THE

ORDER

DATED0709.2023 PASSED ON I.A.NO.1 IN OS.NO.155/2023 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND CJM, I/C II ADDITIONAL SENIOR CIVIL JUDGE, JMFC, SHIVAMOGA, REJECTING THE I.A.NO.1 FILED UNDER

ORDER

39RULE1AND2OF CPC. THIS M.F.A. HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON0901.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

JUDGMENT

This miscellaneous first appeal is filed under Section 104 read with Order 43, Rule 1(r) of the Code of Civil Procedure being aggrieved by rejection of application in I.A.No.I filed under Order XXXIX, Rule 1 and 2 of C.P.C. in O.S.No.155/2023.

2. Heard the learned counsel for the appellant/plaintiff and learned counsel for the respondent Nos.1 and 2/defendant Nos.25 and 26.

3. The factual matrix of the case of the appellant herein, who is the plaintiff in O.S.No.155/2023 is that defendant Nos.1 to 23 are the legal representatives of one Badebylu Durgappa @ Durgappa of Urgadur Village, Shivamogga Taluk. Badebylu Durgappa @ Durgappa passed away on 15.06.1974 leaving behind two wives Smt. Sannadurgamma and Smt. Durgamma along with other children and defendants. The defendant Nos.1 to 16 are the legal representatives of Badebylu Durgappa through his first wife Smt. Sannadurgamma and defendant Nos.17 to 23 are the legal representatives through second wife Durgamma. It is the contention of the plaintiff that he entered into an agreement of sale with the defendant Nos.1 to 16 on 08.01.2015 and as per the registered agreement of sale, they have agreed to sell the property for a total consideration of Rs.45,00,000/- and received an advance amount of Rs.20,50,000/-. Similarly, on 10.08.2015, the

defendant Nos.17 to 23 executed another registered sale agreement in favour of the plaintiff agreeing to sell the schedule B property for a total consideration of Rs.45,00,000/- by receiving an advance amount of Rs.20,00,000/- from the plaintiff. The land owners i.e., defendant Nos.1 to 16 were not in possession of relevant documents and they required time to secure the same and hence, time was not the essence of the contract. In terms of the said sale agreement, the defendants agreed to execute the registered sale deeds after getting all the 4 required documents. When the plaintiff was ready and willing to perform his part of contract of both these agreements, the defendants could not obtain the necessary documents and mutation entries until 10.05.2017. The defendants continued to delay the transaction on one or the other pretext. In the meanwhile, the plaintiff learnt that, despite existence of registered sale agreements, the defendant Nos.1 to 23 have entered into a Joint Development Agreement with the defendant No.18. The plaintiff issued notices to all the defendants i.e., defendant Nos.1 to 23 calling upon them to execute the registered sale deeds and no response was received and the plaintiff came to know that defendant Nos.1 to 23 have executed registered Joint Development Agreement dated 09.10.2017 with defendant Nos.25 and 26. Immediately, the plaintiff has filed the suit for the relief of specific performance in O.S.No.187/2017 and the plaintiff also sought the relief to declare the Joint Development Agreement dated 09.10.2017 as null and void. Thereafter, the Joint Development Agreement holder i.e., defendant Nos.24 to 26 have come forward for settlement, since there was a relief of temporary injunction and subsequently, 5 they have been impleaded as parties to the proceedings. When the defendant Nos.24 to 26 came forward to negotiate, a compromise was entered between the plaintiff and defendant Nos.24 to 26, excluding the original owners and the suit was got dismissed against them and compromise was entered into between them.

4. It is also the contention that defendant Nos.24 to 26 unequivocally acknowledged and executed the registered sale agreements dated 08.01.2015 and 10.08.2015 and the parties have also inter-alia agreed to keep the sale agreements and Joint Development Agreement in subsistence. The plaintiff also agreed to co-operate with the defendant Nos.24 to 26 for conversion of their sites for non-agricultural purpose in terms of the agreement entered into between the

parties. In terms of the Joint Development Agreement, the developer is entitled for 46% of the sites and the land owners are entitled for 54% of the sites. However, as the plaintiff would exercise his right over the 54% of the sites in terms of the compromise. The defendant Nos.24 to 26 were excluded in site sharing agreement and the 6 consent of the plaintiff was compulsorily required while dealing with the remaining sites. It is contended that the plaintiff was required to pay the defendant Nos.24 to 26 a sum of Rs.56,00,000/- at the time of execution of the agreement. In view of disposal of the case in O.S.No.187/2017, the defendant Nos.1 to 16 promptly executed an agreement on the very same day i.e., on 23.07.2020. This agreement meticulously outlines the transaction details, adjustment and consideration pertaining to the same along with the site sharing agreement among other aspects. The defendant Nos.1 to 16 have explicitly acknowledged that they have collectively received a total amount of Rs.93,00,000/- as against the total consideration of Rs.2,36,00,000/- for schedule A property from the plaintiff. They also confirmed the receipt of cheques from the plaintiff amounting to Rs.1,42,00,000/- towards the balance consideration in line with the compromise and in the said agreement, the defendants explicitly admitted the earlier sale agreement which has remained in force and defendant Nos.17 to 23 have also given their verbal consent and pledged their 7 commitment to adhere to the terms of the sale agreement in consonance with the stand taken by the defendant Nos.1 to 16.

5. It is further contended that defendant Nos.25 and 26 also filed the suit in O.S.No.190/2022 seeking the relief of mandatory injunction against the plaintiff herein and the land owners seeking the relief of mandatory injunction in terms of the Joint Development Agreement and compromise decree in O.S.No.187/2017. In the said suit, the plaintiff also appeared and filed the written statement reaffirming his willingness to co- operate in the execution of the decree in O.S.No.187/2017 and the lands owners, who are represented through defendant No.2 also filed written statement denying the sale agreement with the plaintiff for a sum of Rs.2,36,00,000/-. In the meanwhile, the defendant Nos.25 and 26 abruptly filed a memo to withdraw the suit on 21.06.2023 and the same was opposed by the plaintiff and inspite of it, the Trial Court passed an order permitting to withdraw the suit and did not press the suit for enforcement of terms and conditions of the

compromise in the decree passed in O.S.No.187/2017. 8

6. It is also the contention that an agreement was entered into between the defendant Nos.24 to 26 and the land owners in terms of the site distribution agreement dated 11.04.2023 excluding the plaintiff and the said agreement was also registered which is null and void. Hence, sought for the relief of declaration that site distribution agreement dated 11.04.2023 got registered between defendant Nos.1 to 23 with defendant Nos.24 to 26 as null and void and transaction between them is not binding on the rights of the plaintiff without settling the right of the plaintiff over the land and also grant the relief of permanent injunction against the defendants. The plaintiff also filed an application inter-lia seeking the relief of temporary injunction and the same was granted at the first instance ex-parte and after the appearance of the defendants, the Trial Court has rejected the application and being aggrieved by the said the order of rejection, the present miscellaneous first appeal is filed before this Court.

7. The very contention of the learned counsel for the appellant-plaintiff in this appeal is that the Trial Court erred in 9 holding that plaintiff has suppressed the true facts for not mentioning the current nature of the schedule properties in the schedule. The Trial Court also erred in holding that granting of temporary injunction against the suit landed property would be infructuous and the very approach of the Trial Court is erroneous. It is also contended that the Trial Court has committed an error in framing a question whether the plaintiff has got right, title, interest over the suit property and the same ought not to have been considered while considering an interlocutory application and the Court has to see whether there is a prima facie case or not. The counsel would contend that there is no dispute with regard to the sale agreements entered into between the plaintiff and the defendant Nos.1 to 23 in the year 2015. It is also not in dispute that suit is filed for the relief of specific performance in O.S.No.187/2017 and the same has ended in compromise between the plaintiff and defendant Nos.24 to 26. It is also contended that, as on the date of compromise itself, the defendant Nos.1 to 16 have ratified the compromise and they have entered into an agreement dated 23.07.2020 and acknowledged the amount of consideration. 10

8. The counsel also would vehemently contend that when the defendant Nos.24 to 26 have also filed the suit in O.S.No.190/2022 seeking enforcement of site distribution agreement based on the compromise in O.S.No.187/2017, they ought not to have entered into an agreement by registering the same with the land owners and the defendant Nos.24 to 26 have done the same only in order to prevent the right of the plaintiff and the same has not been considered by the Trial Court. It is contended that the Trial Court ought to have considered the prima facie case of the plaintiff and committed an error in expressing opinion on the merits of the case whether the plaintiff is entitled for the relief or not and the Trial Court not at all considered the agreement dated 23.07.2020 entered into between the plaintiff and the defendant Nos.1 to 16 and also the suit of the defendants in O.S.No.190/2022 while rejecting the application. The counsel would further contend that when the documents have been created on the strength of the site sharing agreement, now the defendants are making hectic efforts to dispose of the property and the same has not been considered 11 by the Trial Court while passing an order rejecting the application.

9. Per contra, learned counsel for the respondent Nos.1 and 2/defendant Nos.25 and 26 would vehemently contend that, admittedly, the schedule property is an agricultural land and the land to an extent of 4 acres 20 guntas has been developed after conversion. The counsel also brought to notice of this Court the document dated 27.01.2021 i.e., temporary approval of the layout plan. The counsel also would vehemently contend that, if the land owners agree with regard to the right of the plaintiff, they have no objection. The counsel would further contend that the share of the developer is 46% and the share of the land owners share is 54% and the present suit is filed for the relief of declaration to declare the sale agreements as null and void. The counsel also would contend that miscellaneous is also filed before the very same Court to revoke the compromise and the plaintiff cannot blow hot and cold by filing the suit for the relief of declaration to declare the agreement as null and void on the 12 basis of the compromise and also cannot seek for revocation of the compromise decree.

10. The counsel would vehemently contend that the very conduct of the plaintiff is sufficient to hold that he is not entitled for any relief. The counsel would further

contend that the Trial Court has taken note of the material available on record and rightly arrived at the conclusion that the plaintiff is not entitled for any relief and the question whether the said compromise decree is enforceable under law is also taken note by the Trial Court and answered the same as negative and when the compromise was entered, the defendant Nos.1 to 23 are not the parties to the compromise and the fact that property is also developed by the defendant Nos.25 and 26 is not in dispute. The conditions imposed in Para Nos.9 and 10 of the compromise is not binding on the defendant Nos.1 to 23, since the suit in O.S.No.187/2017 filed by the plaintiff against the defendant Nos.1 to 23 was dismissed as not pressed and moreover, the defendant Nos.1 to 23 are not parties in the alleged compromise petition and decree. It is further contended that the Trial Court 13 discussed in detail regarding the same and comes to the conclusion that the plaintiff has not made out any prima facie case and accordingly, answered point Nos.1 to 3 as negative in coming to the conclusion that there is no balance of convenience and hardship in favour of the plaintiff. Hence, it does not require any interference.

11. Having heard the learned counsel for the appellant, learned counsel for the respondents and also considering the material available on record which is placed by both the appellant as well as the respondents i.e., the objections filed to the application and also considering the application filed for vacating the interim order granted by this Court, the points that would arise for consideration of this Court are: (1) Whether the Trial Court has committed an error in dismissing the application I.A.No.I filed under Order XXXIX, Rule 1 and 2 of C.P.C. and whether it requires interference?. (2) What order?. 14 Point No.(1) 12. Having heard the learned counsel for the appellant and learned counsel for the respondents, this appeal is inter-se between the plaintiff and the developer and the original owners are not made as parties to the appeal. However, while filing the appeal, the appellant has made a note below the cause title that for the purpose of this appeal, only the aforementioned respondents are considered as necessary parties and therefore, other defendants from the Trial Court are not included in this appeal as they are not necessary parties.

13. It is also important to note that the Court has to take note of the pleadings of the parties and the fact that the property originally belongs to defendant Nos.1 to 23 is not in dispute. It is also not in dispute that earlier there were two sale agreements dated 08.01.2015 executed by defendant Nos.1 to 16 and 10.08.2015 executed by defendant Nos.17 to 23. It is also not in dispute that both the sale agreements are registered sale agreements. It is also not in dispute that when the sale transaction has not taken place, the plaintiff has filed the suit in 15 O.S.No.187/2017 against the defendant Nos.1 to 23 and defendant Nos.24 to 26 have also been added and relief is sought to declare the Joint Development Agreement dated 09.10.2017 as null and void, since despite the sale agreements referred above, the original owners have entered into a Joint Development Agreement during the subsistence of the sale agreements.

14. No doubt, the records reveal that while compromising the issue involved between the parties i.e., the appellant and the respondents, excluded the original owners by filing a memo stating that they are not pressing the suit against them, since both of them have agreed to develop the property in line with the site sharing agreement and the plaintiff also agreed to co-operate with the respondents herein for conversion of land and for development of the property. Hence, the Court has to take note of the relief sought in the present suit in O.S.No.155/2023 against the defendants, including the original owners as well as the present respondents. The reliefs sought by the plaintiff in the said suit reads as hereunder:

16. a) For declaration that the site distribution agreement dtd.11.4.2023 which got registered between def.no.1 to 23 with def.no.24 to 26 which got registered vide SR.No.smg1415/23- 24 dtd.28-8-2023 is null and void and not binding on the right of plaintiff as the same is in contravention with the terms of decree in O.S.No.No.187/2017 on the file of Principal Senior Civil Judge, Shivamogga. b) For declaration that all the further transactions on the strength of the site distribution agreement dtd.11-4-2023 which got registered between def.no.1 to 23 with def.no.24 to 26 registered vide SR.No.smg1415/23-24 dtd.28- 4-2023 is null and void and not binding on the right of plaintiff without settling the rights of plaintiff over the land. c) For permanent injunction restraining the defendants from entering into any sort of contract of alienation such as sale, mortgage or any agreements

which transfers the right of even a part of land, site within the suit schedule properties without settling the rights of plaintiff. If the Honble court feels that, the right of the plaintiff cannot be settled as prayed in the above relieves (a) to (c), the plaintiff may be pleased to grant with judgment and decree for all the relieves sought by him in O.S.187/2017 on the file of principal senior civil judge, Shivamogga to provide justice to the plaintiff. 17 d) For each other relief's that is necessary and ancillary to the main relief of the suit. e) For court cost and such other relief's that this Honble court deems fit under the attendant circumstances of this Honble Court.

15. Having considered the prayers, the suit is filed for the relief of declaration to declare that the Joint Development Agreement entered into between the land owners and the respondents herein dated 11.04.2023 as null and void and the same is not binding on the plaintiff and also sought for the relief of permanent injunction. It has to be noted that when the said relief is sought, the Court has to look into the pleadings made in the plaint in O.S.No.155/2023 which this Court has narrated above. Keeping in view the relief as sought in the suit and also the interim-relief sought in the application, this Court has to appreciate the material available on record.

16. I have already pointed out that there is no dispute with regard to the fact that earlier two sale agreements were entered in the year 2015 and also there is no dispute with regard to the fact that during the subsistence of the said sale 18 agreements, the original owners i.e., defendant Nos.1 to 23 have entered into Joint Development Agreement with the present respondents. The relief is also sought against the present respondents in the said suit to declare that the Joint Development Agreement as null and void. It is also not in dispute that a compromise was entered into between the parties in O.S.No.187/2017. The appellant also relied upon the compromise entered into between the parties in terms of Annexure-J.

17. Having taken note of the terms and conditions of the compromise, there was a reference with regard to the settlement arrived at between the parties and also recognizing the Joint Development Agreement and the plaintiff is also having right

in respect of the said property and there is a recital with regard to preparation of document of site distribution agreement. In order to sell the sites, consent of the plaintiff is necessary and the same is mandatory and so also, there was reference in Para No.10 with regard to the payment is concerned. It is also important to note that the present respondents have also filed a 19 suit in O.S.No.190/2022, wherein also sought the relief against the plaintiff herein arraying him as defendant No.1 and the land owners are also made as parties to the proceedings based on the compromise decree.

18. It has to be noted that the Trial Court failed to take note of the pleadings made in the suit in O.S.No.190/2022 and also the relief sought by the respondents herein against the plaintiff and defendants for mandatory injunction directing the defendants to execute the site distribution agreement in terms of the Joint Development Agreement dated 09.10.2017 and also in accordance with the compromise decree in O.S.No.187/2017 dated 23.07.2020 on the file of the Principal Senior Civil Judge, Shivamogga when the relief is sought against the plaintiff herein and also defendant Nos.1 to 23 in the said suit and Trial Court failed to take note of the said fact that the said suit was abruptly withdrawn without assigning any reason by filing a memo for withdrawal of the suit.

19. It is also important to note that the plaintiff also filed the written statement in the said suit and also filed statement of 20 objection to the said memo for withdrawal and inspite of it, the Trial Court permitted to withdraw the suit and thereafter, the present suit is filed before the Trial Court, inter-alia seeking the relief of temporary injunction by the plaintiff. The respondents also not disputes the compromise entered into between them and the plaintiff in O.S.No.187/2017. But, it is the contention of the learned counsel for the respondents that, if the owners have no objection, they are ready to implement the terms and conditions of the compromise decree and the said contention cannot be accepted when the respondents knowing fully well that there was an agreement of sale in favour of the plaintiff, subsequently entered into a Joint Development Agreement and the dispute ended in compromise.

20. It is also important to note that the Trial Court lost sight of the conduct of the parties and when there was a compromise between the parties before the Court, the respondents entered into an agreement with the original owners excluding the plaintiff herein which is detrimental to the interest of the plaintiff as against the compromise decree. The Trial 21 Court failed to take note of the conduct of the parties and the relief sought before the Trial Court is to declare the said agreement between the original owners and the respondents as null and void and the same is not binding and also there was compromise between the respondents and plaintiff in O.S.No.187/2017 and entered into an agreement with the original owners excluding the plaintiff and failed to take note of the conduct of the parties i.e., respondents and the original owners.

21. It has to be noted that the Trial Court committed an error in expressing opinion on the merits of the case while considering the application for the relief of temporary injunction and the fact that whether the compromise decree is enforceable under law or not ought not to have been considered while considering the application for temporary injunction and ought to have considered the same while considering the matter on merits and while considering the application, the Trial Court ought to have considered whether there is a prima facie case to grant the relief or not. It is also important to note that the Trial 22 Court lost sight of the fact that there was a registered agreements of sale executed by defendant Nos.1 to 16 and 17 to 23 in the year 2015 vide two separate registered sale agreements and suit is also filed for the relief of specific performance and in the meanwhile, Joint Development Agreement was also executed in favour of the defendant Nos.25 and 26 i.e., the respondents herein and the respondents herein, consequent upon filing of the suit, entered into a compromise for development of the property with the plaintiff and the plaintiff also agreed to co-operate with the respondents herein for development of the property and lost sight of the fact that excluding the plaintiff, the agreement was entered into between the original owners and the respondents vide agreement dated 11.04.2023 which is the subject matter of the suit.

22. This Court would like to rely upon the judgment of the High Court of Delhi in C.J.

INTERNATIONAL HOTELS LTD. & ORS. VS. N.D.M.C. & OTHERS reported in 2001 (60) DRJ562 wherein at Para No.11, it is held as follows: 11. At the stage of deciding the application for temporary injunction, the Court is not required to go 23 into the merits of the case in detail. What the Court has to examine is : (i) the plaintiff has a prima facie case to go for trial; (ii) protection is necessary from that species of injuries known as irreparable before his legal right can be established; and (iii) that the mischief of inconvenience likely to arise from withholding injunction will be greater than what it likely to arise from granting it. The principles governing the grant of injunction are well settled. The power is discretionary and is to be exercised on sound judicial principles. Where no violation of the rights of the plaintiffs was involved, the interim injunction should not be granted. It is on these principles that the Court has to examine the respective case of the parties.

23. This Court also would like to rely upon the judgment of the High Court of Calcutta in SOURAV SARKAR VS. HIRAK RANJAN SARKAR AND ANOTHER reported in 2022 SCC ONLINE CAL3840 wherein at Para No.16, it is held as follows: 16. The term irreparable injury means substantial injury which cannot be adequately remedied or compensated by way of damages and the Court shall consider whether protection is necessary from the species of injuries known as irreparable before his legal right can be established. Court shall consider whether the mischief or inconvenience likely to arise from withholding injunction will be greater than which is likely to arise if granted. At this stage of deciding the application 24 for temporary injunction, the Court is not required to go into the merits of the case in detail.

24. This Court would also like to rely upon the judgment of the Apex Court in GUJARAT BOTTLING CO. LTD. AND OTHERS VS. COCA COLA CO. AND OTHERS reported in (1995) 5 SCC545 wherein it is held that while considering an application filed under Order 39, Rule 1 and 2 of C.P.C. for granting an order of injunction, it is the discretion of the Court as to the factors to be considered in exercise of discretion and balance of convenience to be seen being an equitable relief, conduct of party seeking the injunction or the party seeking Courts interference with the order of injunction must be fair. The conduct of the respondents in not adhering to the terms of the compromise and entering into

fresh agreement with the original owners against the compromise decree is nothing but to defeat the right of the plaintiff. Hence, the Trial Court failed to take note of the same while exercising the discretionary relief of temporary injunction.

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25. The other main contention of the learned counsel for the respondents is that the property is now converted and it is not an agricultural land and without paying the Court fee, the plaintiff cannot seek the relief and the relief sought in the present suit is to declare the site distribution agreement as null and void. The learned counsel appearing for the appellant brought to notice of this Court the valuation made by the respondents when they filed the suit for the relief of mandatory injunction in O.S.No.190/2022 and there cannot be two yardsticks regarding consideration of Court fee and if any such issue is raised in the written statement, the Trial Court has to frame an issue with regard to the payment of Court fee is concerned. But, the Court has to take note of the prima facie case when the plaintiff inter-alia sought for the relief of temporary injunction.

26. It is also important to note that on the very same day of compromise entered into between the parties on 23.07.2020, there was an agreement between the plaintiff and the defendant Nos.1 to 16 in respect of 2 acres 10 guntas of land 26 in respect of their share and acknowledged the additional payment. As rightly pointed out by the learned counsel for the appellant, the same has not been considered by the Trial Court while considering the prima facie case of the appellant-plaintiff. The Trial Court also failed to consider the pleadings made in the suit in O.S.No.190/2022 and instead, proceeded to pass an order expressing opinion on the merits of the case. The Trial Court comes to the conclusion that the original land owners were not made as parties to the said compromise. The said observation is erroneous when the agreement was entered into between the parties on the very same day of compromise by defendant Nos.1 to 16 with the plaintiff and the Trial Court ought to not to have expressed opinion on the merits of the case as to whether the compromise is enforceable or not. The Trial Court also made an observation that condition Nos.9 and 10 made in the compromise is not binding on the defendant Nos.1 to 23 and the said observation is erroneous, in view of the agreement entered into between the plaintiff and the original owners on

the very same day on 23.07.2020 and acknowledged the receipt of balance consideration. The fact that said compromise is 27 enforceable or not has to be considered on merits of the suit and not at the time of considering an application filed under Order XXXIX, Rule 1 and 2 of C.P.C. The Trial Court only has to consider whether there is a prima facie case and failed to take note of balance of convenience when there was agreements of sale in favour of the plaintiff which were registered and the compromise was also ratified by some of the original owners i.e., defendant Nos.1 to 16.

27. It is also the contention that other defendants have also verbally ratified the compromise in respect of the remaining land i.e., 2 acres 10 guntas and the same is a matter of trial and the Trial Court only has to look into prima facie material and the Trial Court while considering the application filed under Order XXXIX, Rule 1 and 2 of C.P.C., failed to take note of subsequent development which took place between the parties and even the respondents herein have filed the suit in O.S.No.190/2022 for enforcement of conditions of the compromise entered into between the parties and sought for the relief of mandatory injunction. The Trial Court failed to take note of the conduct of 28 the respondents in withdrawing the said suit and the said withdrawal is consequent upon entering into an agreement with the original owners by the respondents herein i.e., on 11.04.2023 and issue involved between the parties is with regard to the validity of the agreement entered into between the original owners and the respondents herein i.e., agreement dated 11.04.2023 and relief is also sought for declaration to declare the same as null and void and not binding on the plaintiff. The Trial Court lost sight of the same and committed an error in proceeding to reject the application by expressing opinion on the enforceability of the compromise decree and the same amounts to considering the matter on merits and the Trial Court ought not to have expressed the opinion on merits of the case while considering an application filed under Order XXXIX, Rule 1 and 2 of C.P.C. and failed to protect the interest of the plaintiff considering the pleadings and the documents which have been produced by the plaintiff, particularly the compromise petition which is not in dispute and subsequent agreement entered into between the land owners and the respondents herein, excluding the plaintiff which is detrimental to the interest 29 of the plaintiff and the interest of the plaintiff ought to have been protected by the Trial Court by granting

an interim order and the same has not been done. Hence, I answer point No.(1) as affirmative. Point No.(2) 28. In view of the discussion made above, I pass the following:

ORDER

(i) The appeal is allowed. (ii) The impugned order dated 07.09.2023 passed on I.A.No.I in O.S.No.155/2023 is hereby set aside and consequently, the application in I.A.No.I filed by the plaintiff in O.S.No.155/2023 is allowed granting the relief of Temporary injunction as sought. Sd/- JUDGE ST

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