



**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 22<sup>nd</sup> OF MARCH, 2025**

**MISC. APPEAL No. 1843 of 2025**

***SAROJ PRAJAPATI (DEAD) W/O LATE SHRI NAND KISHORE  
PRAJAPATI THROUGH LRS (1) SONU AND OTHERS***

*Versus*

***SUMAN GAUD AND OTHERS***

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**Appearance:**

*Shri Abhishek Singh Bhadoriya – Advocate for appellants.*

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**J U D G M E N T**

This Miscellaneous Appeal, under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (for brevity “the Code”), has been filed against order dated 27.01.2025 passed by III District Judge, Ganjbasoda, District Vidisha (M.P.) in RCSA No.84/2022 by which an application filed by plaintiff under Order XXXIX Rule 1 and 2 of the Code has been rejected.

2. It appears that the Trial Court by order dated 08.07.2021 rejected the application, however, in the light of order dated 11.11.2024 passed by this Court in MA. No.6144/2023, the matter was remanded back to decide the application afresh after giving opportunity of hearing to all the parties.

3. It is the case of plaintiff that defendant No.1 is the owner and in possession of Aaraji No.189 area 1.400 hectares situated in Rajaudha. An agreement to sell was executed on 04.03.2020 to the effect that the plaintiff would develop the plots



and defendant No.1 would execute the sale deed as per the instructions of plaintiff. The land was agreed to be sold for a consideration amount of Rs.2,26,03,400/- out of which the plaintiff has paid Rs.35,90,000/- to defendant No.1 and it was agreed that the remaining amount shall be paid in installments. When plaintiff after developing the plots started alienating the same, then she requested defendant No.1 to execute the sale deed, however, on account of high price of the sale deeds, intention of defendant No.1 became dishonest and she started harassing the plaintiff and also started indulging in issuing notices to the purchasers directly and to execute the sale deed directly. Accordingly, defendant No.1 has filed a suit against plaintiff and her son which was registered as Civil Suit No.85A/2020 and by way of counterblast, the plaintiff had also filed the Civil Suit No.54A/2021. Earlier, the plaintiff had got an order of temporary injunction and therefore the execution of sale deeds was stopped but after vacation of the interim order defendant No.1 has again started alienating the property. Thus, it was pleaded that the plaintiff has already spent Rs.60 lacs in development of the plots and it was prayed that till final decision of the case, defendant No.1 may be restrained from alienating the property and also be restrained from partition or further alienation and similarly defendants No.2 to 13 and 17 be directed not to raise construction.

4. Defendant No.1 filed her written statement and claimed that agreement to sell has already been terminated. In fact, it is the plaintiff who is illegally trying to alienate the plot of defendant No.1 unauthorizedly. Plaintiff has no right or title in the property. Defendant No.1 and the persons to whom she has alienated the property are in possession and they are entitled to maintain the possession.

5. The trial Court, after hearing both the parties, came to conclusion that some of the cheques which were given by plaintiff to defendant No.1 had bounced. Therefore, it was held that the plaintiff had no *prima facie* case in her favour.



Furthermore, the plaintiff had no right or title over the property in dispute by virtue of agreement to sell.

6. Challenging the order passed by the court below, it is submitted by counsel for appellants that since an agreement to sell was executed between plaintiff and defendant No.1, therefore, the court below should have restrained her from alienating the property.

7. Heard learned counsel for appellants.

8. It is not out of place to mention here that earlier appellants had filed a suit for permanent injunction. Later on, it was withdrawn without any liberty to file a fresh suit. Furthermore, undisputedly, some of the cheques issued by plaintiff had also bounced. Under these circumstances, the trial court did not commit any mistake by holding that appellant has no *prima facie* case in her favour. Furthermore, the agreement to sell would not transfer any right or title in her favour. **(Munishamappa Vs. M. Rama Reddy & Ors. decided on 02.11.2023 in Civil Appeal No.10327/2011)**

9. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference. Appeal fails and is hereby *dismissed*.

**(G.S. Ahluwalia)**  
**Judge**

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