

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

APPEAL FROM ORDER NO. 18 OF 2014

Wahed Khan Chand Khan .. Appellant

Versus

Asef Khan Mehtab Khan Pathan
and another .. Respondents

Shri R. R. Shinde, Advocate for the Appellant.
Shri S. F. Patel, Advocate for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 28TH AUGUST, 2015.**

PER COURT :

. The defendant has filed the present appeal aggrieved by the order passed by the Trial Court allowing the injunction application to the extent the present appellant is restrained from alienating or creating third party interest in respect of the suit property.

2. The learned counsel for the appellant submits that, the respondents/plaintiffs did not abide by the terms of agreement. The plaintiffs were and are not ready and willing to perform their part of contract. The plaintiffs as such have disintitiled themselves from getting any relief. The True owner could not have been injuncted from exercising his right as a owner. The

Court has failed to consider the aspect of prima facie case and balance of convenience in its correct perspective. The learned counsel for the appellant further submits that, as per the terms, the plaintiffs have not paid 1/4th amount.

3. The learned counsel for respondents supports the order.

4. The Court while passing order has observed that, the plaintiffs have parted with Rs. 16,00,000/-. The defendant is in possession of the property and to avoid further multiplicity, the defendant is restrained from alienating, creating third party interest in the suit property.

5. It is submitted by the learned counsel for respondents that, now plaintiffs have adduced their evidence.

6. Whatever observations are made by the Trial Court at this stage are prima facie in nature. The Trial Court will be required to decide the suit on its own merits and on the basis of evidence adduced by the parties.

7. Considering all aforesaid aspects of the matter, I am not inclined to entertain the present appeal from order. The appeal from order as such is disposed of. No costs.

[S. V. GANGAPURWALA, J.]