

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 79 OF 2014
WITH
CIVIL APPLICATION NO.9348 OF 2014

Kedarnath s/o Madhavrao Wadkar,
Age-50 years, Occu:Agriculture,
R/o-Chaunda Nagar, Ahmedpur,
Tq-Ahmedpur, Dist-Latur.

...APPELLANT
(Ori. Plaintiff)

VERSUS

Sau. Rukhmanibai Baburao Wadkar,
Age-64 years, Occu:Pensioner,
R/o-Mahadev Galli, Ahmedpur,
Dist-Latur, at present residing at
Gopal Chawdi, Nanded,
Tq. & Dist-Nanded.

...RESPONDENT
(Ori. Defendant)

...
Mr. Anil H. Kasliwal Advocate for Appellant.
Mr. G.N. Chincholkar Advocate for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 24TH FEBRUARY, 2015

ORAL JUDGMENT :

1. With consent of both sides, heard learned counsel for the Appellant-Plaintiff and learned counsel for Respondent- Defendant, finally.

2. Learned counsel for Plaintiff is submitting that the Appellant-Plaintiff has filed suit against Respondent-Defendant for decree of Rupees Fifteen Lakhs with interest. The Defendant is sister in law of the Plaintiff. It is the case of the Plaintiff that Plaintiff had obtained hand-loan of Rupees Fifty Two Thousand in 1997 from Defendant and the same was to be repaid in two years along with interest of Rupees Twenty Seven Thousand. Defendant had put condition that 80 R land from the land Survey No.269/2 of Ahmedpur should be transferred in her name by registered sale deed as security. Sale Deed was executed on 25th March 1997. By another agreement - Kararnama property was agreed to be re-conveyed in favour of

the Plaintiff. The Plaintiff returned the amount on 25th March 1999. After some days when demanded, the Defendant refused to re-convey the property. She demanded Rupees Eighty Thousand in addition to the amount due. Matter was taken up before Panchas and it was settled to pay Rs.80,000/- more till January 2006. Plaintiff went to pay Rs.80,000/- at the time of Gudi Padwa of 2005 but Defendant avoided to accept money or re-convey. In the meantime the property concerned was acquired by the Government for Water Safety Tank. According to the learned counsel for Plaintiff, as the land was in the name of Defendant, it was decided to let the Defendant prosecute the land acquisition proceedings and the amount as received would be paid to the Plaintiff after deducting the amount spent for prosecuting the case. Award of Rs.29,66,115/-(Rupees Twenty Nine Lakhs Sixty Six Thousand One Hundred Fifteen) came to be passed. Plaintiff requested Defendant to pay Rupees Fifteen Lakhs and rest of the amount may be

retained by the Defendant. But the Defendant refused and thus the Suit came to be filed, it has been submitted.

3. In the Suit, Application for Temporary Injunction Exhibit 5 was filed, claiming that amount is deposited in Executing Court, and the Defendant should be restrained from withdrawing the amount.

4. The learned counsel for Respondent-original Defendant is submitting that the Defendant has denied that another agreement to re-convey was executed by the Defendant. According to the learned counsel the Suit itself was time barred, if the recitals of the Plaint are perused. According to the counsel, recitals in Para 5 of the Plaint show that in the year 1999 Defendant did not agree to the re-conveyance or accepting the amount of Rupees Eighty Thousand and still the Suit came to be filed only in the year 2013. It

has been submitted by him that when the entire proceedings of the land acquisition were going on, the Plaintiff never raised any objections putting up his claim to the compensation and only when the amount was deposited, the Suit has been filed and objections are being raised.

5. Learned counsel for the Appellant - Plaintiff, relying on the pleadings and observations of the trial Court, is submitting that the trial Court found that there was a prima facie case in favour of the Plaintiff but found that it was a matter of money and there would be no irreparable loss and balance of convenience was not in favour of the Plaintiff and thus declined to grant injunction. According to him, if the prima facie case was found to be in favour of the Appellant - Plaintiff, temporary injunction should have been granted.

6. Question is - Whether impugned Order is

not correct, not legal or not proper?

7. The dispute between the parties regarding alleged execution of agreement of re-conveyance is a matter to be decided in the Suit. At the same time, the defence would also require to be considered, regarding conduct of parties and passage of long time. Only because prima facie case is made out by the Plaintiff, it does not mean that the temporary injunction needs to be granted. The dispute boils down to claim for money. Balance of convenience and question of irreparable injury is always to be considered. No exception can be taken to the observations of the trial Court that the decree which may be passed, would be amenable to calculation in terms of money and thus it could not be said that Plaintiff would suffer irreparable injury. The Suit apparently and on the face of it, is suit for recovery of money. Thus, looking to the facts, only because the amount of Award in favour of Defendant is lying in

the Executing Court, there is no reason that temporary injunction should be granted.

8. I do not find that the order of the trial Court is not correct, not legal or not proper.

9. There is no substance in the Appeal. The Appeal From Order is dismissed.

10. In view of dismissal of Appeal From Order itself, Civil Application would not survive and the same is disposed of, accordingly.

[A.I.S.CHEEMA,J.]