

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**APEAL FROM ORDER NO. 3 OF 2014
WITH CA/271/2014 IN AO/3/2014**

**SHANKAR GURULINGAPPA BURANDE AND ANOTHER
VERSUS
CHANDRAKALABAI UMAKANT REWADKAR AND OTHERS**

...

Advocate for Petitioners : Mr. Joshi Sarang P
Advocate for Respondent No.2 : Mr. S. V.Suryawanshi

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CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. Mr. Joshi, the learned counsel for the appellants strenuously contends that the trial court, while rejecting the application filed by the present appellant for temporary injunction, has failed to consider the prima facie case. The mortgage has not been considered properly, only on the ground that municipal house number was not mentioned. The plaintiffs have not suppressed any material facts. The plaintiff No.1 has paid the outstanding loan of Rs. 15 lac. together with interest in the loan account of Gurukrupa Provisions. The plaintiffs have sought relief of specific performance. When the plaintiffs have parted with huge amount, their rights needs to be protected.

2. Mr. Suryawanshi, learned counsel for the respondents submits that the defendants are the owners of shop alongwith open space of Municipal House Nos.6/148, 6/149, 150, 151 and they have mortgaged the said house numbers to the bank. There is manipulation in the Isar Pavati

and plaintiff No.1 has failed to perform the contract as per the said agreement.

3. I have considered the submissions. The parties agree that now the matter is fixed for evidence. The temporary injunction application is rejected in July, 2013. Even otherwise, section 52 of the Transfer of Property Act would take care of the rights of the appellants, as the purchaser *pendete lite* would step into the shoes of the transferror and will be bound by any decree passed by the Court.

4. Considering all aforesaid aspects of the matter, I am not entering into the other factual merits. The appeal from order as such is disposed of.

5. The trial court shall decide the suit on its own merits on the basis of evidence adduced before it *de hors* observations made at the time of deciding the temporary injunction application. The trial court shall endeavour to dispose of the suit expeditiously, preferably within 9 months.

6. In view of disposal of appeal from order, the civil application also stands disposed of.

(S. V. GANGAPURWALA, J.)

JPC