

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

APPEAL FROM ORDER NO. 486 OF 2012

Shri. Vishnu Govind Gokhale	... Appellant
V/s.	
Shri. Mayursh Mahadeo Salunkhe	... Respondent

Mrs. A.R.S. Baxi for the appellant.
None for the respondent.

**CORAM : K. K. TATED, J.
DATED : 08/01/2015.**

P.C.:

. Heard learned Counsel for the Appellant. None for the respondent.

2 This Appeal from Order is preferred by original defendant challenging the order dated 27.01.2012 passed by 2nd Joint Civil Judge, Sr. Division, Sangli below Exh.5 in Special Civil Suit no. 299 of 2011 restraining appellant from creating any third party right, title and interest in respect of suit property admeasuring 154.73 sq. meters from City Survey No. 669B, 669B1 and 671 till the hearing and final disposal of the suit.

3 In the present proceeding, the appellant original defendant agreed to sell the suit property to the respondent original plaintiff by Agreement for Sale dated 28.01.2011. Sale deed was to be executed on or before 28.04.2011. Before completion of execution of Sale Deed, respondent original plaintiff learnt that one Prakash Dhanpal Bhojkar

filed Regular Civil Suit No. 123 of 2011 in respect of suit property for injunction. Thereafter, the respondent original plaintiff filed Special Civil Suit no. 299 of 2011 in the Court of the Civil Judge, Senior Division, Sangli for specific performance of Agreement for Sale dated 28.01.2011. In that suit, the respondent original plaintiff preferred application below Exh.5 under Order 39 Rule 1 and 2 and Section 151 of the C.P.C. for injunction restraining the Appellant from creating any third party right, title and interest in respect of suit property till the hearing and final disposal of the suit. That application was allowed by the Trial Court by impugned order dated 27.01.2012. Hence, the present Appeal from Order.

4 The learned Counsel Mrs. A.R.S.Baxi appearing on behalf of the appellant original defendant submits that the Court below failed to consider that the Agreement for Sale dated 28.01.2011 was executed on Rs.100/- Indian non Judicial stamp paper. The same was only notarised. The same was not registered as required by the law. She further submits that the respondent has not paid stamp duty as per Bombay Stamp Act on the said Agreement for Sale dated 28.01.2011. She submits that these points are raised by the defendant in the written statement before the Trial Court. The Trial Court has not considered and passed the impugned order restraining Appellant from creating any third party right, title and interest in respect of suit property. Hence, impugned order passed by the Trial Court is required to be set aside.

5 In support of her contention, the learned Counsel for the appellant relies on the judgment of the Apex Court in the matter of

Avinash Kumar Chauhan V/s.Vijay Krishna Mishra reported in AIR 2009 SUPREME COURT 1489 and Judgment of our High Court in the matter of ***Naginbhai P. Desai V/s. Taraben A. Sheth reported in 2003 (1) Mh. L. J. 994***. On the basis of these facts and law declared by the Apex Court and our High Court, the learned Counsel for the appellant submits that the impugned order passed by the Trial Court dated 27.01.2012 below Exh. 5 in Special Civil Suit no. 299 of 2011 required to be set aside.

6 I heard the learned Counsel for the appellant. It is to be noted that in the present proceeding suit filed by the respondent is pending for hearing and final disposal on its merits. The Trial Court passed impugned order restraining appellant from creating any third party right, title and interest in respect of suit property till the hearing and final disposal of the suit.

7 It is to be noted that the objections raised by the appellant in respect of the payment of court fees, registration of the Agreement for sale are already considered by the Trial Court in paragraph 13 of the impugned order. The Trial Court held in paragraphs 10 and 13 of the impugned order that the objections raised by the defendant about the payment of stamp duty and registration are question of law and facts and same can be decided at the stage of final hearing after recording the evidence of the both parties.

8 In the present proceeding, as per Agreement for sale dated 28.01.2011, the appellant has not handed over the possession of the

suit property to the respondent original plaintiff. In view of this fact, the authorities cited by the appellant are not applicable to the facts and circumstances of the present case.

9 Considering the above mentioned facts, I am of the opinion that if the interim relief is vacated, the respondent plaintiff will suffer irreparable loss and injury. Hence, the impugned order needs no interference.

10 Hence, Appeal from Order stand dismissed with no order as to costs.

(K.K.TATED, J.)