

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 100 OF 2015

Baburao Ramchandra Gurav & Ors. ... Appellants
VS.
Pradip Madanlal Gupta & Anr. ... Respondents

Mr. Amey Deshpande, Advocate for the appellants.
Mr. Amit Ashok Gharat, Advocate for the respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **1st September, 2015**

P.C.:

Admit. By consent, the Appeal is heard finally and disposed of at the stage of admission.

2. In this Appeal, the order dated 26th November, 2014 passed by the 6th Joint Civil Judge, Senior Division, Nashik granting temporary injunction in favour of the respondents/plaintiffs is challenged. The respondents have filed the suit for specific performance in respect of land of 1H 10R at Mouje Belgaon, Dhaga, District Nashik.

3. It is the case of the appellants/defendants that they are owners of this land and agreed to sell the land to respondents/plaintiffs. The respondents/plaintiffs filed the suit on the basis of oral agreement dated 4th November, 2012 of Rs.79,27,500/- As per the case of the respondents, they paid Rs.5,00,000/- towards earnest money in cash to

the appellants and thereafter the respondents sent draft of sale deed to the appellants. However, the appellants are not ready to perform part of their contract and, therefore, the suit was filed. The learned trial Judge granted order of injunction restraining the appellants/defendants from creating third party interest in the suit property till disposal of the suit.

4. The learned counsel for the appellants submitted that the specific performance is claimed on the basis of oral agreement. Such agreement had never taken place between the parties. There is no payment of money by the respondents to the appellants. This is a bogus case filed by the respondents against the appellants. He submitted that the respondents could not claim any right or interest in the suit property at the time of pressing temporary injunction against the appellants.

5. The learned counsel for the respondents, while opposing this Appeal, has submitted that the appellants did not deny that there was no agreement between the respondents and appellants. He relied on the portion of written statement filed by the appellants especially in paragraph 9 wherein the appellants has stated that there was a talk in respect of suit land through one Munot and the appellants agreed to sell the land. This is the admission on the part of appellants. The learned trial Judge has rightly granted temporary injunction in favour of the

respondents/plaintiffs. He further submitted that the law acknowledges oral agreement and hence, the order passed by the learned trial Judge is legal.

6. I have gone through the impugned order passed by the learned trial Judge. Perused the plaint and the written statement filed by the parties. The order passed by the learned Judge is completely illegal and baseless. The respondents did not produce a single document showing payment of Rs.5,00,000/-. The draft sent by the respondents of the sale deed cannot be considered as admission on the part of the appellants. The learned trial Judge has committed gross error in putting burden on the appellants to prove the fact that the appellants did not enter into documentation. The finding given for granting injunction is absolutely illegal rather stray and giving go-by to all the principles of Evidence Act and also of the basic principles of transfer of property Act. The order passed by the learned Judge deserves to be set aside and is accordingly set aside.

7. Appeal is thus allowed.

(MRS.MRIDULA BHATKAR, J.)