

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

WRIT PETITION NO.3423 OF 2015

Ramchandra Krishna Mane and anr. : Petitioners
versus
Sou.Mahadevi Guralingappa Managoli and anr. : Respondents.

Mr. Y P Narvankar for the Petitioners.
Ms. Shama Mulla for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 30th September 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 12/03/2015 passed by the learned Adhoc District Judge-2, Sangli by which order the application (Exhibit 7) filed by the Appellant original Plaintiff for stay pending the Appeal came to be allowed and the parties were directed to maintain status quo till final disposal of the appeal.

2 The suit in question being Special Civil Suit No.152 of 2005 was filed by the Respondent No.2 – original Plaintiff for specific performance of the contract against the Respondent No.1. The said suit came to be dismissed on the ground that the Plaintiff has not described the plot in respect of which the specific performance is sought in terms of the new layout which has been sanctioned.

3 The Trial Court has deemed it appropriate to compensate the Plaintiff in the sum of Rs.Five Lakhs. However, after holding the Plaintiff as not being entitled for the grant of special performance, the Trial Court has recorded findings in respect of readiness and willingness, as regards the fact that the Defendant No.1 did not inform the Plaintiff of the sanction of new layout, as also entering into the transaction in respect of the plot in the new layout though the order of status quo was in operation and also not getting permission of the revenue authorities though mandated by the agreement of which specific performance was sought in favour of the Plaintiff. Hence except the said finding that the Plaintiff is not entitled to the specific performance as recorded by the Trial Court in favour of the Plaintiff, the rest of the findings have been recorded in favour of the Plaintiff. The Plaintiff has been non-suited on the ground that the Plaintiff has not described the area of 1048 sq.mtrs which the Plaintiff has agreed to purchase in terms of the new layout, in the suit which he has filed for seeking specific performance.

4 At this stage it is required to be noted that the matter had reached this Court at the interlocutory stage by way of Appeal from Order No.627 of 2006 when a statement came to be made on behalf of the owners that the layout was modified and plot Nos. 8 and 9 of the old layout (referred to as “plan” in the said order) now form part of plot No.4 and road under the new layout plan. Upon the said statement, the injunction was restricted to the said

plot Nos.8 and 9 of the old draft layout plan meaning thereby that the said injunction was to operate in respect of plot No.4 of the new layout. The said injunction was undisputedly continued till the dismissal of the suit on 31/03/2012.

5 The original Plaintiff filed an Appeal in which he filed an application for stay in which an order of status quo came to be passed on 03/12/2014 which was to operate till the other side was to file reply to the said Application. The said application has been allowed by the impugned order dated 12/03/2015. The Lower Appellate Court has observed that since the decree of dismissal passed by the Trial Court is under challenge, it would be appropriate to direct the parties to maintain status quo till final disposal of the Appeal.

6 In the light of the facts as afore-stated wherein the statement came to be made on behalf of the owner before this Court in Appeal from Order No.627 of 2006 which statement has been recorded in the order dated 16/10/2006 which is to the effect that the plot Nos.8 and 9 of the old plan now form part of plot No.4 and road under the new layout plan and the injunction being continued against the said plot No.4. In my view, the order directing the parties to maintain status quo so as to avoid further complications cannot be found fault with. No case for interference in the writ jurisdiction of

this Court is made out. The above Writ Petition is accordingly dismissed. However, the hearing of the Appeal is expedited. The Lower Appellate Court considering the fact that the Appeal is of the year 2012 is directed to hear and decide the same latest by 31/01/2016. Needless to state that the contentions of the parties are kept open for being urged before the Lower Appellate Court. The Appeal would undoubtedly have to be decided on its own merits and in accordance with law.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Order.