

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

**APPEAL FROM ORDER (ST). NO. 23392 OF 2014
WITH
CIVIL APPLICATION (ST). NO. 23393 OF 2014**

Shri. Ananta Hendrya Bhoir	... Appellant
V/s.	
M/s. Palwa Dwellers	... Respondent

Mr. Nitin Jagtap for the appellant.

Mr. Milind Sathe, Senior Counsel i/b Mr. Deepak Punamiya for the respondent.

**CORAM : K. K. TATED, J.
DATED : 05/01/2015.**

P.C.:

. By consent of both the parties, Appeal from Order taken on record for admission.

2 Heard learned Counsel Mr. Jagtap for the appellant and learned Senior Counsel Mr. Sathe for the respondent.

3 By this Appeal from Order, the original defendant challenges the order dated 03.07.2014 passed by the 5th Joint Civil Judge, Senior Division, Thane below Exh.5 in Special Civil Suit No. 41 of 2010 restraining defendant from creating any third party right, title and interest in respect of suit property till the decision of the suit and also the order dated 03.07.2014 below Exh. 18 in counter claim by which the Trial Court rejected the defendant's application under order 39 Rule

1 and 2 read with Section 151 of the C.P.C. for temporary injunction against the respondent original plaintiff.

4 In the present proceeding, the respondent original plaintiff filed Special Suit No. 41 of 2010 in the Court of Civil Judge, Senior Division, Thane for specific performance of Agreement for Sale dated 23.02.2007. Following are the prayers in the suit:

“a) The Hon'ble Court may be pleased to grant the decree for specific performance in favour of the plaintiff by directing the Defendant to specifically perform all obligations as per the Agreement for Sale dated 23.02.2007.

b) The Hon'ble Court may be pleased to grant conveyance in favour of the plaintiff by directing Defendant, of the property mentioned in the Agreement for Sale, dated 23.02.2007. As plaintiff is ready for the payment of Stamp Duty.

c) The Hon'ble Court may be pleased to grant the order of perpetual injunction against the Defendant, their employees, agents, servants, persons claiming through them from creating third party interest and/or handing over the possession of the property mentioned in the Agreement For Sale to any third party.

d) Pending the hearing and final disposal of the suit property of the property mentioned in the Agreement For Sale temporary injunction in terms of prayer clause (c) above may be granted in favour of the plaintiff.

e) Ad-interim relief in terms of above prayer clause (d)

f) Defendant may be order and decreed to pay the cost of this suit to the plaintiff.

g) Any other and further orders as deemed fit and proper in the interest of justice may be passed”

5 In that suit, the respondent preferred application below Exh.5 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. The appellant original defendant also preferred application below Exh.18 in counter claim for injunction against the respondent original plaintiff. The Trial Court by an order dated 03.07.2014 ordered that plaintiff has already paid the entire consideration to the appellant. The Trial Court also observed in paragraph 8 of the impugned order that the defendants have not terminated the said contract dated 23.02.2007 till the filing of the suit. The Trial Court has observed that the appellant received all the benefits under the agreement of sale, hence he cannot create third party interest over the suit property.

6 The learned Counsel Mr. Nitin Jagtap appearing on behalf of appellant original defendant submits that the respondent original plaintiff by fraud executed the conveyance deed dated 12.01.2010. He further submits that though in written statement it is stated that entire consideration of Rs.1,91,20,000/- was paid to the appellant, he has not received the same. In view of this fact, the learned Counsel for the appellant submits that during the pendency of the suit and their counter claim the respondent original plaintiff be restrained by an order of injunction as prayed by him below Exh.18 before the Trial Court.

7 On the other hand, the learned Senior Counsel Mr. Milind Sathe appearing on behalf of respondent original plaintiff submits that they have already paid entire consideration of Rs.1,91,20,000/- to the appellant as well as his sons. He relies on copy of written statement

filed by them in the Counter Claim. He submits that entire consideration of Rs.1,91,20,000/- was paid by account payee Cheques. Therefore, there is no question of interfering the impugned order passed by the Trial Court.

8 I heard both the sides at length. It is to be noted that in the present proceeding, the respondent original plaintiff filed suit for specific performance of agreement dated 23.02.2007. Admittedly, they are in possession of the suit property. Not only that the written statement of the plaintiff to the counter claim filed by the defendant shows that they have already paid entire consideration of Rs.1,91,20,000/- to the appellant as well as his sons. Considering this fact, I do not find any substance in the present Appeal from Order.

9 Hence, Appeal from Order stands rejected.

10 In view of rejection of Appeal from Order, nothing survives in the Civil Application. Hence, same is also rejected as infructuous.

(K.K.TATED, J.)