

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

**APPEAL FROM ORDER NO. 1408 OF 2013
WITH
CIVIL APPLICATION NO. 1665 OF 2013**

M/s. Maniratna Enterprises	... Appellant
V/s.	
Smt. Ratna Narayan Thakare & Ors.	... Respondents

Mr. P. S. Dani, Senior Counsel i/b Jui Nerurkar for the appellant.
Mr. Rahul Thakur for the respondent nos. 1 to 3.

**CORAM : K. K. TATED, J.
DATED : 11/08/2015.**

PC.:

. Heard learned Senior Counsel Mr. Dani for the Appellant and learned Counsel Mr. Thakur for the respondent nos. 1 to 3.

2 The learned Senior Counsel for the Appellant submits that the respondent nos. 4 & 5 are formal parties. They are not claiming any relief against them at present.

3 By consent of both the parties, matter is taken on board for final hearing at the stage of admission.

4 For the sake of convenience, hereinafter the nomenclature of the parties will be referred as stated in the plaint i.e. Appellant as Plaintiff

and respondent nos. 1 to 3 as defendant nos. 1 to 3.

5 This Appeal from Order is preferred by the plaintiff challenging the order dated 19.11.2013 passed by the Joint Civil Judge, Senior Division, Panvel below Exh.5 in Special Civil Suit no. 29 of 2012 rejecting the plaintiff's application under Order 39 Rule 1 & 2 of C.P.C. for an order of injunction against the defendants from creating any third party rights, title and interest in respect of suit property i.e. land admeasuring 900 sq. meters to be allotted by the defendants nos. 4 and 5 to the defendants nos. 1 and 3.

6 The plaintiff by agreement for sale dated 30.05.2005 agreed to purchase the suit property for Rs.9 lacs. Out of Rs.9 lacs, plaintiff paid Rs.5,40,000/- to the defendant nos. 1 to 3 from time-to-time, some by cash and some by account payee cheques. When the plaintiff learnt that the defendant nos. 1 to 3 are creating third party rights, title and interest in respect of suit property, they issued notice dated 14.09.2011 calling upon the defendants not to create any third party rights, title and interest in respect of suit property and for other reliefs. As the defendant nos. 1 to 3 failed and neglected to comply the notice dated 14.09.2011 the plaintiff filed Special Civil Suit no. 29 of 2012 for Specific Performance of Agreement for sale dated 30.05.2005 and

injunction restraining defendants from creating third party rights, title and interest in respect of suit property. In that suit, the plaintiff preferred application under Order 39 Rule 1 and 2 of C.P.C. for an order of injunction. That application was rejected by the Trial Court on 19.11.2013. Hence, the plaintiff preferred present Appeal from Order in this Court on 06.12.2013.

7 The learned Senior Counsel for the plaintiff submits that the Trial Court erred in coming to the conclusion that the plaintiff failed to make out the case for an injunction restraining defendants from creating any third party rights, title and interest in respect of suit property till the hearing and final disposal of Special Civil Suit no. 29 of 2012. He submits that the Trial Court ought to have held that the plaintiff paid more than 50% consideration to the defendants in advance. He further submits that the Trial Court failed to consider that the plaintiff filed the present Special Civil Suit no. 29 of 2012 against the defendants to execute the agreement for sale dated 30.05.2005. He submits that neither the defendants nor any legal heirs of Mr. Narayan Thakare, the original owner placed on record the names and addresses of other legal heirs. He submits that the Trial Court erred to hold that merely because there was a possibility that, there might be other legal heirs of original deceased owner, who were not made party in the present

proceeding and therefore, the plaintiff was not entitled to any ad-interim/interim reliefs. He further submits that the Trial Court failed to consider the various documents including the payment receipt of Rs.5,40,000/- at the time of passing the impugned order dated 19.11.2013. He submits that if during the pendency of the present proceeding, if the defendants are not restrained by an order of injunction from creating third party rights, then they may create the same and in that case, nothing will survive in the present proceeding.

8 On the basis of these submissions, the learned Senior Counsel for the plaintiff submits that this Hon'ble Court be pleased to set aside the order dated 19.11.2013 passed by the Trial Court below Exh. 5 in Special Civil Suit no. 29 of 2012 and restrain the defendants from creating any third party rights, title and interest in respect of suit property till the hearing and final disposal of the suit. He submits that if injunction is not granted, irreparable loss and injury will be caused to them. He submits that they have good chance of success in the present proceeding.

9 On the other hand, the learned Counsel for the defendant nos. 1 to 3 vehemently opposed the present Appeal from Order. He submits that the plaintiff is not entitled to any order of injunction

under order 39 Rule 1 and 2 of C.P.C. restraining the defendants from dealing in their own property. He submits that the defendants in their reply to Exh.5 specifically denied the execution of agreement of sale dated 30.05.2005. He submits that the defendants even denied the receipt of the payment of Rs.5,40,000/- as stated by the plaintiff. He submits that plaintiff had made alternate prayer in Special Civil Suit no. 29 of 2012 for a decree of compensation/damages to the tune of Rs.1 crore. Hence, there is no question of any irreparable loss to the plaintiff, if their application below Exh.5 stands rejected.

10 The learned Counsel for the defendants further submits that the Trial Court rightly held that plaintiff failed to join all the legal heirs of deceased Narayan Thakre in the present proceeding and therefore, the plaintiff was not entitled to any relief of an injunction. He further submits that plaintiff failed and neglected to bring on record the cogent evidence to show the execution of agreement dated 30.05.2005 and also the payment of Rs.5,40,000/- by way of part consideration of the said transaction. He submits that these facts were considered by the Trial Court in detail and therefore, dismissed the plaintiff's application below Exh.5 under Order 39 Rule 1 and 2 of C.P.C.

11 The learned Counsel for the defendants submits that if this Court grants any interim relief in favour of the plaintiff, irreparable loss will be caused to the defendants. The defendants being owners of the suit property, they have right to sell the same in market for their benefit. He submits that as the plaintiff failed to make out prima facie case for an order of injunction, there is no question of entertaining the present Appeal from Order. Same is required to be dismissed with costs.

12 I heard both the sides at length. In the present proceeding, as per the agreement for sale dated 30.05.2005, plaintiff paid more than 50% consideration to the defendants i.e. out of Rs.9 lacs, paid Rs.5,40,000/-. Whether, the defendants executed the agreement for sale dated 30.05.2005 or not, whether they received the consideration of Rs.5,40,000/- or not, is required to be proved by leading cogent evidence to that effect.

13 It is to be noted that plaintiff paid substantial amount by cheques drawn in the name of defendant. In any case, the suit filed by the plaintiff is pending for hearing and final disposal on its own merits. If during the pendency of the said suit, defendants created third party rights, title and interest in respect of suit property, it will be very

difficult for plaintiff to recover the possession of the suit property. Hence, in the interest of justice, I am of the opinion that plaintiff has made out prima facie case for an order of injunction restraining the defendants from creating any third party rights, title and interest in respect of suit property till the hearing and final disposal of Special Civil Suit no. 29 of 2012.

14 Hence, the following order.

ORDER

- a) Appeal from Order is allowed.

- b) The Order dated 19.11.2013 passed by Civil Judge, Senior Division, Panvel below Exh.5 in Special Civil Suit no. 29 of 2012 under Order 39 Rule 1 and 2 of C.P.C, is set aside.

- c) The Application preferred by plaintiff below Exh.5 under Order 39 Rule 1 & 2 is allowed by issuing an order of injunction restraining defendant nos. 1 to 3 from creating any third party rights, title and interest in respect of suit property till the hearing and final disposal of the

Special Civil Suit no. 29 of 2012.

d) Considering the facts and circumstances of the present case, the hearing of Special Civil Suit no. 29 of 2012 is expedited.

e) This Court expects from the Trial Court to dispose of the Special Civil Suit no. 29 of 2012 as early as possible, but in any case within one year from today.

f) Civil Application no. 1665 of 2013 which is for an order of injunction, nothing survives in view of disposal of Appeal from Order itself. Hence, same is dismissed as infructuous.

g) No order as to costs.

(K.K.TATED, J.)