

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAF) NO. 2898 OF 2014

IN

FIRST APPEAL NO. 831 OF 2014

Meena Manohar Raghorte & Ano. Vs. Sitaram Jangluji Rahate

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A. S. Joshi Adv for applicants.
Shri S. P. Pawar Adv for respondent.

CORAM: A. S. CHANDURKAR J.

DATED: 13 APRIL, 2015.

Present application is moved by the appellants seeking to restrain the non applicant from creating third party rights in the suit property.

The appellants who are the original plaintiffs have filed suit for specific performance of agreement dated 10.03.2003. As per aforesaid agreement the sale deed was to be executed by 31.12.2003. In the agreement it was mentioned that if any process of acquisition was commenced after the agreement then the earnest amount would be returned and the agreement would be cancelled. According to plaintiffs, there was an impediment in transferring the suit property for the period from 07.07.2003 till 18.08.2008. The suit for specific performance was filed on 03.09.2007. It is submitted that during pendency of the suit the

trial Court restrained the defendant from alienating the suit property. Hence, according to the applicants, during pendency of the appeal the non applicant should be restrained from alienating the suit property.

The application is opposed by the non applicant. It is submitted that the trial Court has rightly held the suit to be barred by limitation. It is submitted that as the time was fixed in the agreement itself, in terms of Article 54 of the Limitation Act, 1963 the date fixed for performance was 31.12.2003 and the suit was filed after expiry of the period of limitation. It is also submitted that there was no extension for execution of the agreement and the trial Court has recorded a finding in that regard as regards contents marked as Article 'A'. The learned counsel for the non applicant relied upon the judgment reported in *Ahmmadsahab Abdul Mulla (deceased by L. Rs.) Vs. Bibijan and Ors. AIR 2009 Supreme Court 2193* in that regard.

On a prima facie consideration of the evidence on record, it is clear that in the agreement date fixed for completing transfer was 31.12.2003. There is no evidence that after the agreement any process of acquisition was undertaken in respect of said land. The trial Court has also found that portion marked 'A' on the agreement dated 10.03.2003 was not signed by the defendant and hence the same amounted to refusal on the part of the defendant to complete contract.

Though the trial Court had granted interim injunction, the same was prior to recording of evidence. Moreover, it has not been

shown that the protection available under Section 52 of the Transfer of Property Act is in any manner insufficient in case the injunction is refused.

Considering the aforesaid material on record, in my view the protection available to the applicants under Section 52 of the Transfer of Property Act is sufficient to safeguard their interests. Needless to state that any alienation if made would be subject to final outcome of the appeal. Hence there is no ground made out for grant of injunction in favour of the applicants. Application therefore stands rejected. It is clarified that observations made in this order are only on the basis of prima facie examination of the material on record and for considering the interim prayer for injunction.

JUDGE

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