

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

APPEAL AGAINST ORDER NO.76 OF 2014

(Rajesh s/o Kundanlal Chhabariya and another ..vs.. Shri Shashikant s/o Dadasaheb Yadav)

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 06-02-2015

Heard Shri P.A. Abhyankar, the learned Advocate
for the appellants. None for the respondent.

2. The appeal is filed by the original plaintiffs challenging the order passed by the trial Court rejecting the application filed by the plaintiff praying for temporary injunction against the defendant restraining him from creating any third party interest over the suit property in any manner.

3. Shri P.A. Abhyankar, the learned Advocate for the appellants has submitted that as per the agreement between the plaintiffs and the defendant, the plaintiffs had taken further steps in the matter to get the loan sanctioned and in that regards the documentary evidence is filed on the record which is not properly appreciated by the trial Court which has resulted in the erroneous order. It is further submitted that the plaintiffs have

prima facie case in their favour to show the existence of the agreement of sale between the parties and therefore, it is necessary that during the pendency of the civil suit, the defendant be restrained from creating third party interest in the suit property.

4. The application filed by the plaintiffs before the trial Court praying for temporary injunction does not show the pleadings regarding the existence of *prima facie* case, balance of convenience and irreparable loss. Shri P.A. Abhyankar, the learned Advocate for the appellants submits that it is not necessary that these ingredients should be pleaded and established and the grant of temporary injunction is upto the discretion of the trial Court and which discretion has to be exercised judiciously considering the facts of each case. Apart from the fact that the necessary ingredients which enable the trial Court to exercise the discretion while granting temporary injunction are lacking in the application, I do not find any illegality or perversity in the appreciation of material on the record by the learned trial Judge.

5. Shri P.A. Abhyankar, the learned Advocate for the appellants has submitted that the appellants are willing to deposit an amount of Rs.25,00,000/- to show their bonafides. Considering the fact that as per the pleadings of the appellants, in 2012 as per the agreement to sale, the valuation of the property was Rs.50,00,000/-, the

proposal as given by the appellants cannot be accepted.

6. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

Civil Application No.86 of 2014.

In view of disposal of the appeal, the civil application has become infructuous. It is disposed accordingly.

JUDGE

pma