

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

APPEAL AGAINST ORDER NO.129 OF 2014

Shriram Rambhau Bhangе
-vs-
Sumitrabai wd/o Bhaurao Kadu & Ors.

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

Court's or Judge's Orders.

Shri M. R. Johrapurkar, Advocate for appellant.
Shri R. A. Gupte, Advocate for respondent Nos.1 to 5.

CORAM : A.S.CHANDURKAR, J.
DATE : AUGUST 19, 2015

Heard finally with consent of learned counsel for the parties.

The original plaintiff in Spl.C.S. No.892/2013 is aggrieved by direction Nos.3 and 4 contained in order passed below Exhibit-5 dated 24/07/2014.

The appellant had filed Spl.C.S.No.892/2013 seeking specific performance of the agreement dated 01/12/2006. Under the said agreement, the respondents are entitled to receive a sum of Rs.27,71,300/- while according to the appellant he is liable to pay sum of Rs.26,71,300/-. Admittedly a sum of Rs.10,53,000/- has been paid by the appellant to the respondents. The trial Court while restraining the respondents from alienating the suit property has directed the appellant to pay the balance amount of Rs.16,71,300/- within a period of one month from the date of the order.

Shri M. R. Johrapurkar, learned counsel for the appellant submitted that the trial Court was not justified in directing the appellant to pay the balance amount and the same was payable on

execution of the sale deed. It was submitted that sum of Rs.10,53,000/- has already been paid to the respondents who are also in possession of the suit property.

Shri R. A. Gupte, learned counsel for the respondents supported the impugned order and submitted that the trial Court was justified in directing the appellant to deposit the balance amount as the respondents were being restrained from alienating the suit property.

Considering the agreement between the parties and the admitted position that Rs.10,53,000/- have already been paid to the respondents, the trial Court was not justified in directing the appellant to pay the balance amount. Said amount can be paid to the respondents as and when they execute the sale deed. Moreover, as the respondents are in possession of the suit property, the order restraining them to alienate the same is justified in view of the fact that they have received amount of Rs.10,53,000/-.

In view of aforesaid, the order passed below Exhibit-5 dated 24/07/2014 is modified and the directions in Clause Nos.3 and 4 of said order are set aside. After the measurement of the land in question is completed and the revenue records are corrected, it is open for the respondents without prejudice to their rights to apply before the trial Court for directing the appellant to get the sale deed executed.

Appeal is partly allowed in aforesaid terms. No order as to costs. Pending civil applications also stand disposed of.

JUDGE