

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

APPEAL AGAINST ORDER NO.51 OF 2015

M/s. Vidarbha Builders & Developers, thr its partner Mr. Jethanand Motiram
Khandwani

..vs..

Smt. Minakshi W/o Pandeshkumar Araspure and ors

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

Court's or Judge's order

Shri A.M. Ghare, counsel for the appellant.

Shri P.D. Randive, counsel for R-1 to 8.

CORAM : A.P. BHANGALE, J.

DATE : JULY 14, 2015.

Heard.

By Civil Application (CAA) No.111 of 2015,
learned counsel for the appellant has sought to rely
upon some additional documents in order to pray for
interim injunction in the pending special civil suit.
The learned 3rd Joint Civil Judge Senior Division,
Nagpur has rejected the application under order below
Exh.5 filed by the plaintiff for grant of temporary
injunction.

It appears that the appellant has filed
Special Civil Suit No.543 of 2013 for specific
performance of contract between the parties viz.
defendant Nos.1 to 3 and the plaintiff. The plaintiff
has advanced the substantial amount of consideration

pursuant to the agreement to sale the property. Thus, the plaintiff prayed for relief against defendant Nos.1 to 8 to get the sale deed executed in respect of the suit plots and to restrain the defendants from transferring or creating the third party interest by issuing permanent injunction against them pending hearing and disposal of the special civil suit. The agreement between the parties is in respect of land bearing field survey No.83/2 total admeasuring 0.81 hectare, situated at Mouza Bharatwada, P.H. No.17, Tahsil and District Nagpur. The sheet numbers thereof are 791 & 792 and city survey number is 174. According to the plaintiff, the family of the defendants had prepared a layout and Plot Nos.1 to 27 in the layout were transferred by defendant Nos.4, 5, and Late Narayan Araspure in the name of defendant Nos.1, 2, and 3 for a consideration.

Subsequent to transfer in favour of defendant Nos.1 to 3 who applied to the Nagpur Improvement Trust for regularization of the said plots under the Gunthewari Act and awaiting regularization, agreement for sale dated 14.6.2008 was entered into by defendant Nos.1 to 3 as vendor in

favour of the plaintiff as intended purchaser. The amount of Rs.30.00 Lacs was paid by the plaintiff to defendant Nos.1 to 3 and balance was agreed to be paid at the time of execution and registration of the sale deed by defendant Nos.1 to 3. According to the plaintiff, substantial amounts were advanced towards consideration agreed for and the suit is pending for specific performance of contract.

It was legitimately expected that irreversible situation ought not to be allowed to be created. Learned trial Judge, therefore, in my opinion, erred not to restrain the defendants from creating third party rights in respect of the suit property as the suit property was needed to be preserved. If the parties are allowed to alienate the suit property by creating third party interest etc, it may result into multiplicity of proceedings pending disposal of the suit. Therefore, till the suit is pending, interim order could have been passed to restrain the defendants from creating third party interest in respect of the suit property. Subject matter of the suit cannot be allowed to be alienate without prior permission of the Court.

At this stage, learned counsel for respondent Nos.1 to 3 makes a statement that respondent Nos.1 to 3 will not create any third party interest pending disposal of the suit. However, he prays for expeditious disposal of the special civil suit.

In view of above, the parties shall appear before the trial Court and co-operate for expeditious disposal of the special civil suit. The documentary evidence sought to be produced before this Court may be produced before the trial Court when the parties lead their necessary evidence and heard on merits. Learned trial Judge shall dispose of the special civil suit pending before him as expeditiously as possible and preferably within a period of six weeks from the date of this order.

Needless to state that defendants in the suit, shall not create any third party interest in respect of the subject matter of the agreement without prior permission of the trial Court.

The appeal against order is disposed of accordingly. There shall be no order as to costs.

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In view of the disposal of the appeal, the civil application also stands disposed of accordingly.

JUDGE

!! BRW !!