

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

918 WRIT PETITION NO. 2499 OF 2016

SURESH LAKHUMAL WADHAVA AND OTHERS
VERSUS
MANOJ NAMDEO VADAK AND OTHERS

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Advocate for Petitioners : Bhandari Anand P.
Advocate for Respondents 2, 3, 4, 7, 10, 12, 13 : Smita S.
Kulkarni Advocate for Respondent 1 : K.M. Nagarkar

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CORAM : T.V. NALAWADE, J.
DATED : 23rd August, 2016.

ORDER :

1. The petition is filed to challenge the order of District Judge -2, Kopergaon made in Misc. Civil Appeal No. 48/2015. This proceeding was filed by respondent No. 1 to challenge the order made on Exh. 5 by Trial Court in Special Civil Suit No. 52/2014 and the suit is pending in the Court of Civil Judge, Senior Division, Kopergaon.

2. The suit is filed by present petitioners for relief of specific performance of contract. It is their case that under three agreements of 2011, they have agreed to purchase different portions from the defendants and they have parted with most of the consideration. It is their case that the sale deed could not be executed as the portions which were to be sold are fragments

and sale of the property was not permissible in view of the provisions of Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It is the case of plaintiffs that the defendants, who had agreed to sell the property to them executed sale deed on 29.10.2012 in favour of respondent No. 1 and sale deed shows that even possession is handed over to respondent No. 1. It is the case of petitioners that the defendants ought not have sold the property and the aforesaid legal bar ought to have been considered and their rights will be affected, if the nature of the property is changed. Plaintiffs have prayed for declaration and injunction is claimed against the defendants to prevent them from making construction over the suit property.

3. The Trial Court had granted relief of status-quo, but the First Appellate Court has set aside that order and the application filed for relief of temporary injunction is rejected.

4. The aforesaid circumstances show that on one hand, there is owner, respondent No. 1, who is having possession and who wants to make construction. On the other hand, there are the plaintiffs, who want the relief of specific performance of contract of sale. Such relief is always within the discretion of the

Court. Further, the defendant, respondent No. 1 has taken the defence that he is bonafide purchaser without notice. In view of these circumstances, the Trial Court could not have prevented respondent No. 1 from making construction, but such order was made. That order is set aside by the District Court. In view of the nature of dispute and the possibility that there was knowledge to respondent No. 1, this Court asked respondent No. 1, present in the Court as to whether respondent No. 1 will be pulling down the construction, if plaintiffs succeed in the suit. Respondent No. 1 conveyed the undertaking through his counsel that he will be pulling down the construction if plaintiffs succeed. In view of these circumstances this Court holds that there is no need to set aside the order made by the District Court.

5. In the result, petition stands dismissed. Such written undertaking is to be produced in the Trial Court by the present respondent No. 1. Direction is given to expedite the matter and in any case, dispose of the matter within nine months from the date of this order.

[T.V. NALAWADE, J.]

SSC/