

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CONTEMPT PETITION NO. 31 OF 2014
IN
CIVIL APPLICATION NO. 11970 OF 2005
IN
SECOND APPEAL NO. 82 OF 2005**

Hamidkhan s/o Noor Khan Pathan
- died – Thr. L.Rs.

..... PETITIONERS

V E R S U S

Tamijkhan s/o Noor Khan Pathan
& Ors.

..... RESPONDENTS

.....

Mr. V.B.Garud, Advocate for Petitioners.

.....

CORAM : T.V.NALAWADE, J.

DATE : 30th MARCH, 2016

ORAL ORDER :-

. The petition is filed by one of the party of Second Appeal No. 82 of 2005 presently pending in this Court. Copy of order made by this Court on 04/04/2007 is produced on record and the said order is reproduced as under :

“1. Heard learned counsel for the parties.

2. The application is filed for

restraining the respondent No. 1 from creating third party interest. It is necessary to secure juxtaposition. Hence, the C.A. is allowed and the respondent No. 1 is directed to maintain status quo and not to create any third party interest during pendency of the appeal. C.A. disposed of. ”

2. Learned counsel for the petitioner submitted that the aforesaid contemnor has made agreement with 2 persons viz. respondent Nos. 2 and 3 and Tajim Khan has agreed to sale the suit properties to these 2 persons and that was done after the aforesaid order. Learned counsel submitted that in view of such agreement, there is breach of the direction given by this Court to maintain status quo and so there is civil contempt committed by Tajim Khan.

3. The provision of Section 54 of the Transfer of Property Act, 1882, which is in respect of contract for sale, reads as under :

*“ **“Sale” defined** - “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

***Sale how made** - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the*

case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale – A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property. ”

4. The aforesaid provision shows that mere agreement does not create interest of any kind in favour of the party to the agreement in respect of the property mentioned in the agreement. Thus, no breach of the direction given by this Court is committed. There is only an agreement and it appears that the party agreed to sale the property in future. In view of these circumstances, no action can be taken like civil contempt of Court.

5. Contempt Petition stands rejected.

[T.V.NALAWADE, J.]

KNP/C.P. 31.2014 in S.A. 82.2005.odt