

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

CIVIL APPLICATION NO. 15352 OF 2015
IN
SECOND APPEAL NO. 494 OF 2014

Sou. Surekha W/o Shrikrishna Bhosale ... Applicant

Versus

Santosh S/o Subhash Bhosale and another ... Respondents

Mr. A. R. Kale, Advocate for applicant

Mr. S. S. Choudhari, Advocate for respondent No.1

CORAM : SUNIL P. DESHMUKH, J.
15TH JANUARY, 2016

ORDER:

1. Heard learned counsel for the parties.
2. This is an application by original plaintiff-respondent No.1 in the second appeal, seeking injunction in terms of prayer clause (B).
3. Plaintiff's case in short appears to be that he had entered into an agreement of sale with defendant No.1 and that he had already been in possession of suit property before execution of agreement of sale.
4. It is further submitted by Mr. Kale, learned counsel for plaintiff – applicant that after execution of agreement of sale, sale-deed was executed by defendant No.1 in favour of defendant No.2.

As the terms were not honoured, suit had been instituted for specific performance. Suit had been decreed directing specific performance against defendants. It is submitted that during pendency of appeal at defendant's instance before the district court against aforesaid decree, there had been operating injunction against defendants.

5. Learned counsel Mr. Choudhari for respondent No.1 in the application – appellant in second appeal, however, contends that initially first appeal by defendant No.2 had been preferred before this court against the decree passed against defendants, and High Court had granted interim relief in the form of stay to execution of the decree. As such, according to him, it cannot be said that injunction had been operating after stay order had been passed by this court.

6. Mr. Kale, learned counsel for applicant counters aforesaid submission, by drawing attention of this court to an order dated 13-06-2013 passed by Ad-hoc District Judge-1, Latur on Exhibit-13 in Regular Civil Appeal No. 238 of 2012 whereunder, it appears, defendant No.2 had been enjoined from interfering with possession of respondent No.1 therein i.e. the plaintiff (present applicant) and states that said order is subsequent in point of time to the one being relied on by Mr. Choudhari.

7. Learned counsel Mr. Kale further submits that the contents of present application sufficiently spell out apprehension of disturbance to the possession of the applicant-plaintiff over suit property. He therefore urges for interim relief.

8. Learned counsel Mr. Choudhari, however submits that his client may like to file an undertaking that he would not alienate the property. Mr. Kale submits that, that would not serve purpose underlying the application. Although Mr. Choudhari makes an attempt to contend that defendant No.2 is in possession of property yet, such an attempt appears to be feeble in the face of order dated 13-06-2013 by District Court referred to hereinabove.

9. In the circumstances, I deem it appropriate to grant civil application. Accordingly, civil application is allowed in terms of prayer clause (B) and is disposed of.

SUNIL P. DESHMUKH, J.

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