

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12823 OF 2015

DEEPA DILIP PAWAR

...Petitioner

Versus

DNYANESHWAR VISHNU DONGARE
AND ORS.

...Respondents

....

Mr.Hake Patil i/b. Sanjeev P. Kadam, Advocate for the Petitioner.
Mr. V.S. Talkute, Advocate for the Respondent No.4.

....

CORAM : R. G. KETKAR, J.

DATE : 11th FEBRUARY, 2016

P.C.

1. Heard Mr. Hake Patil, learned Counsel for the petitioner and Mr. V.S. Talkute, learned Counsel for respondent No.4, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 16.9.2015 passed by learned Civil Judge, Senior Division at Satara below Exhibit-5 in Special Civil Suit No.101/2015 as also the judgment and order dated 25.11.2015 passed by learned District Judge-5, Satara in Misc. Civil Appeal No.168/2015. By

these orders, the Courts below dismissed the application below Exhibit-5 taken out by the petitioner, hereinafter referred to as the 'plaintiff' for injunction restraining defendant No.4 from creating third party interest.

3. The plaintiff has instituted the suit for partition and separate possession of her share as also for cancellation of the registered sale deed dated 13.1.2014 executed by defendant No.1 in favour of defendant No.4; for declaration that the registered sale deed dated 3.7.2012 executed by defendant no.1 in favour of defendant No.5 is not binding on her share; for mandatory injunction amongst other prayers. During pendency of the suit, the plaintiff took out application Exhibit-5 for injunction restraining defendant No.4 from alienating survey No.36/1A/2/1. The Courts below dismissed the application on the ground that defendant No.4 completed the construction and also entered into agreements with the purchasers and handed over the possession.

4. Mr.Patil submitted that there are in all 24 flats and defendant No.4 has put in purchasers only in respect of some of the flats and not all 24 flats.

5. On the other hand, Mr. Talkute invited my attention to the findings recorded in para-17 of the trial Court judgment and in para-12 of the District Court judgment and submitted that after constructing the building, defendant NO.4 has executed registered agreements, namely, from 12.12.2013 to 30.3.2015 and handed over possession to the purchasers. The suit is instituted on 7.7.2015 and, therefore, no case is made out for interfering with the impugned orders.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record.

7. In para-17, learned trial Judge has exhaustively dealt with the material on record and observed that from 2011 to 2015 defendant No.4 completed the construction and entered into agreements with the purchasers. The purchasers are also put in possession of the flats. Said finding is also confirmed by the learned District Judge. Defendant no.4 had executed registered agreements for sale between 12.12.2013 and 30.3.2015 whereunder he agreed to sell all 24 flats. The suit is instituted on 7.7.2015 In view thereof, I do not find that the Courts below

have committed any error in dismissing the application Exhibit-5. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)