

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO.269 OF 2016****ALONGWITH****CIVIL APPLICATION NO.346 OF 2016****Smt.Jayashri Vivek Kudale & Ors.****..... Appellants****VERSUS****M/s.Vijayshree Developers & Anr.****..... Respondents**

Mr.V.S.Kapse, i/b. Mr.Shailesh Chavan for the Appellants.

Mr.Madhav Jamdar for the Respondents.

CORAM : R.D. DHANUKA, J.**DATE : 19th OCTOBER, 2016****P.C.**

By this appeal from order, the original plaintiff has impugned the order dated 4th November, 2015 passed by the learned 8th Joint Civil Judge, Senior Division, Pune rejecting the application for injunction filed by the plaintiffs (Ex.5).

2. The development agreement was entered into between the father of the plaintiffs and defendants on 6th February, 2009. Under the said development agreement, the predecessor of the plaintiffs was entitled to receive consideration amount of Rs.1 crore. The defendants had made certain payments out of the said Rs.1 crore to the predecessor of the plaintiffs. Out of 10 cheques, 7 cheques were cleared. 3 cheques issued by the defendants were however dishonoured. The father of the plaintiffs died on 9th February, 2013. On 4th June, 2014 the plaintiffs issued a notice through their advocates thereby cancelling the development agreement and power of attorney on the ground that the defendants had failed to pay the entire consideration amount.

3. The learned trial judge has basically rejected the application for interim injunction on the ground that the plaintiffs had only money claim against the defendants and thus no injunction could be granted.

4. Pursuant to the directions issued by this court, the defendants have filed an affidavit on 6th October, 2016 alleging that most of the structures constructed on suit plot which was subject matter of the development agreement has been sold and/or third parties rights are already created.

5. It is not in dispute that it was not the case of the plaintiffs that any of the structures which was to be constructed on the suit plot were kept as security in favour of the plaintiffs.

6. It is however the case of the plaintiffs that if the plaintiffs succeeded in the suit filed by the plaintiffs and if it is held that the development agreement was rightly terminated by the plaintiffs, the plaintiffs will not be able to recover the possession of property which belong to the plaintiffs from the defendants or from the third parties.

7. A perusal of the record indicates that the cheques issued by the defendants in favour of the predecessor of the plaintiffs are dishonoured in the year 2009. The father of the plaintiffs expired on 9th February, 2013. The notice is issued by the plaintiffs for cancellation of development agreement on 4th June, 2014. In these circumstances, in my view the prima facie view taken by the learned trial judge against the plaintiffs does not warrant any interference in this case. It is however made clear that the observations made by the learned trial judge are prima facie

and shall not be taken into consideration by the learned trial judge while deciding the suit on merits.

8. In view of the fact that the plaintiffs have terminated the development agreement, it would be in the interest of justice that the defendants are directed to inform all the customers in respect of any alienation if carried out in future that the suit filed by the plaintiffs is pending before the learned trial court and such transaction would be subject to the final outcome of the suit.

9. Appeal from Order is disposed of in the aforesaid terms. No order as to costs.

10. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

(R.D.DHANUKA, J.)