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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

APPEAL FROM ORDER NO. 227 OF 2015

with

CIVIL APPLICATION NO. 288 OF 2015

Rafique Ahmedsaheb Kokni & Ors. ... Appellants/Applicants.

V/s.

M/s. Thakkars Developers Ltd. Co. ... Respondent.

Mr. A.A. Kumbhakoni, Senior Advocate i/b. Kuldeep Nikam for the Appellants/Applicants.

Mr. Y.S. Jahagirdar, Senior Advocate a/w. Ranjit A. Thorat, Senior Advocate i/b. P.J. Thorat for the Respondent.

CORAM : N.M. Jamdar, J.

12 July, 2016.

Oral Order :-

The Appellants challenge the order passed by the learned Civil Judge, Senior Division, Nashik dated 3 December 2014, allowing the application filed by the Respondent – Plaintiff below Exhibit 5 and restraining the Appellants from creating third party rights in the suit property.

2. The Respondent – Plaintiff filed a Suit for specific performance based on document dated 20 February 2010 in which according to the Respondent – Plaintiff the Appellants agreed to sell the suit property for considering of Rupees three crores. According to the Respondent – Plaintiff, since the Appellants did not perform their part of contract and execute a sale deed, a suit had to be filed. In this Suit the application below Exhibit 5 was taken out which has been allowed by the impugned order.

3. I have heard Mr. Kumbhakoni, learned Senior Advocate for the Appellants and Mr. Jahagirdar, learned Senior Advocate for the Respondent.

4. Mr. Kumbhakoni submitted that there were two transactions between the parties in respect of two different pieces of land adjoining to each other and the parties had intended to exchange the lands. He submitted that the agreement of which specific performance is sought is not an agreement to sell the property but at the most only a document recording preliminary discussions. He submitted furthermore only Rupees five lakhs out of Rupees three crores have been stated to be paid under the document, which is not conceivable.

5. I have considered the rival contentions.

6. The Suit is based on the document dated 20 February 2010 which is admitted by the Appellants. The document uses a phrase a concluded contract and then refers to the terms and condition as preliminary. From the perusal of this document, prima-facie it cannot be said that the agreement is not contract at all but only exploration of intention to enter into a transaction. As far as the theory of exchange of lands is concerned, it does not find reference in both the documents. whether the parties intended to exchange the land inspite of no reference in the written documents will be a question of evidence to be decided in the trial. Therefore, it cannot be said that there is no merit in the Suit at all so that the interest of the Respondent – Plaintiff need not be protected pending the Suit. At the same time, the equities will have to be balanced considering the fact that the property is a open piece of land and the parties may intend to exploit the same which they will not be able to, due to the pendency of the suit.

6. In the circumstances, it will be equitable if the Respondent – Plaintiff is directed to deposit an amount of Rupees three crores in the Court of Civil Judge, Senior Division, Nashik to be invested in a fixed deposit subject to the further orders to be passed in the Suit. The continuation of interim order granted by the learned Civil Judge, Senior Division, Nashik upon deposit of the

amount by the Respondent – Plaintiff will balance equities in the case as an interim arrangement.

7. Accordingly, the Appeal from Order is disposed of by confirming the order passed by the learned Civil Judge dated 3 December 2014 subject to the Respondent – Plaintiff depositing the amount of Rs.3.00 crores within period of four weeks from today.

8. It will be open to both the parties to make a request to the learned Civil Judge to take up the Suit for final disposal early. Considering the fact that the Suit property is a open piece of land wherein neither of the Appellants will be able to create third party rights and the Respondent has deposited substantial amount, the learned Civil Judge will consider the request for early disposal of the Suit favourably.

9. The observations made above are prima-facie. All contentions on merits in the Suit are kept open.

10. In view of the above, Civil Application is disposed of.

(N.M. Jamdar, J.)