

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 328 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 376 OF 2014
IN
APPEAL FROM ORDER NO. 328 OF 2014

Shri. Gulamali Mamadbhai Somji
and Anr.

.....Appellants

V/s.

Amirali Gafurbhai Chamdiya and Ors.

.....Respondents

* * * * *

Mr. Amit B. Borkar, Advocate for the appellants.

Ms. Chandana Salgaonkar, Advocate for respondents no.11 and 12.

Coram :- Smt. R.P. SondurBaldota, J.

28th March, 2016.

P.C. :-

1). This appeal is directed against the order dated 30th December, 2013 by which the trial Court dismissed the appellant's application at Exhibit-68 for interim injunction to restrain respondents no.6 to 12 from selling, transferring, assigning or creating any third party rights over the suit properties and changing their nature and/or carrying out any construction thereon. The appellants have filed the suit herein for a declaration that the four sale-deeds executed by respondents no.1 to 5 in favour of respondents no.6 to 12 are not binding on them and for

declaring the same to be null and void. By each of further reliefs, the appellants have sought a permanent injunction to restrain all the respondents, *inter-alia*, from creating any third party rights over the suit property and/or carrying out any construction on the suit property, (ii)direction to the Sub-Registrar of Assurances to de-register the sale-deeds and (iii)mandatory order directing the respondents to execute the sale-deeds of the suit property in favour of the appellants by accepting the remaining consideration, and (iv)directions to put the appellants in possession of the suit property.

2). The frame of the appellant's suit and the reliefs claimed therein are strange. On the one hand, the appellants challenge the sale-deeds *inter-se* the respondents, and on the other hand, seek mandatory order against all the respondents for execution of sale-deeds in their favour. There is no relief of specific performance sought though the appellants claim that respondents no.1 to 5 have agreed to sell the suit properties to them. They have merely sought alternative relief of damages.

3). The appellants have relied upon Memorandum of Understanding executed by respondents no.1 to 5 in their favour. As rightly observed by the trial Court, the Memorandum of Understanding is not enforceable in law. The appellants next relied upon the sale-deed signed by respondents no.1, 3, 4 and 5 in their favour for sale of the suit properties to contend that the unregistered sale-deed signed by the parties would amount to an agreement of sale. This argument can also not be accepted because the document of sale-deed is not signed by respondent no.2. The sale by respondents no.1 and 3 to 5 is not of their respective share in the suit property. Therefore, the sale-deed relied upon by the appellants

cannot also be treated as an agreement of sale in respect of the suit properties to them. As regards respondents no.6 to 12, the trial Court has noted that, interim injunction to restrain them from creating any third party rights over the suit properties will arise only after the sale-deeds in their favour are set aside. These transactions had taken place much prior to filing of the suit. These findings of the trial Court are correct and in accordance with law. Hence, the Appeal from Order is dismissed.

4). In view of dismissal of the Appeal from Order, the Civil Application does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)