

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

APPEAL FROM ORDER NO.379 OF 2015

Shri Vilas Eknath Nandgude. .. Appellant
Vs.
Smt. Sarojini Tanaji Shitole & Ors. .. Respondents

Mr. Ashutosh Kumbhakoni, Senior Advocate, a/w Mr. Udyam Shah for Appellant.

Ms. Janvi Durve a/w Mr. Abhishek Pungliya for Respondent Nos.1 to 4.

CORAM : R.D. DHANUKA, J.
DATE : 2nd September 2016

P.C.

. Learned senior counsel for the appellant states that the vakalanama on behalf of an advocate shall be filed within one week from today. Statement is accepted.

2. By this appeal from order, the appellant has impugned the order dated 15th December 2014 passed by the learned Civil Judge, Senior Division, Pune dismissing the application at Exhibit-5 for grant of temporary injunction against the defendants. There is no dispute that the defendant nos.1 to 4 who were owners of the suit property had executed an agreement with the defendant no.5 on 5th August 2006 on the terms and conditions mentioned therein. The defendant no.5 had in turn alleged to have assigned its rights in favour of the plaintiff therein on 7th August 2006. On 4th May 2007, the defendant nos.1 to 4 have terminated the agreement which was executed with the defendant no.5. The plaintiff accordingly filed a suit for specific performance, declaration and injunction in respect of the suit property.

3. It is not in dispute that the defendant no.5 had not paid the entire consideration to the defendant nos.1 to 4 under the agreement dated 5th August 2006. Before paying the entire consideration to the defendant nos.1 to 4 by the defendant no.5, the defendant no.5 has alleged to have entered into a deed of assignment with the plaintiff. It is not in dispute that the defendant no.5 has not challenged the termination notice dated 4th May 2007 and has not filed any proceedings before any Court of law. The plaintiff herein is claiming through the defendant no.5.

4. I have perused the impugned order passed by the learned trial Judge and have heard the learned senior counsel for the appellant and the learned counsel for the respondent nos.1 to 4.

5. The learned trial Judge has held that the defendant no.5 had not paid the entire consideration to the owners and unless the entire amount was paid, the defendant no.5 could not assign its alleged rights in respect of the suit property to the plaintiff.

6. In my view, the learned trial Judge has rightly rejected the interim application at Exhibit-5 filed by the plaintiff for the reasons recorded in the impugned order. I do not find any infirmity with the order passed by the learned trial Judge. Appeal from order is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and is dismissed. No order as to costs.

7. It is made clear that the observations made by the learned trial Judge and by this Court are prima facie. The learned trial Judge shall decide the suit on its own merits without being influenced by the observations made in the impugned order passed by the trial Court and in the order passed by this Court.

R.D. DHANUKA, J.