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

**APPEAL FROM ORDER NO. 189 OF 2016
WITH
CIVIL APPLICATION NO. 407 OF 2016**

M/s. Noopur Developers .. Appellant
Vs.
Mr. Alex Vaz & Ors. .. Respondents

Ms. Seema Sarnaik a/w. Mr. Ameya S. Tamhane for the Appellant.
Ms. Sandhya Nanavare for Respondent Nos.1 & 2.
Mrs. Madhuri More for the Respondent-BMC.

CORAM : G. S. KULKARNI, J.
DATE : 15th NOVEMBER, 2016.

P. C. :

1. Heard Ms. Sarnaik, learned counsel for the appellant, Ms. Nanavare appearing for respondent Nos.1 & 2 and Mrs. More for the Municipal Corporation.
2. This appeal is directed against an order dated 23.11.2015 passed by the learned Judge, City Civil Court, Mumbai in Notice of Motion No. 2173 of 2012 in L. C. Suit No. 3148 of 2012.
3. The appellant is asserting rights under an agreement to sale dated 23.10.1992 entered with defendant No.1 in respect of the suit property. Ms. Sarnaik, learned counsel for the appellant submits that the agreement dated 23.10.1992 between the appellant and respondent No.1 was a concluded agreement and in the teeth of this agreement, respondent No.1 could not enter into a conveyance dated 29.11.2007 with

respondent No.2. It is submitted that though the rights of the appellant would arise under the agreement dated 23.10.1992, the appellant-plaintiff had continued to assert their legal rights in regard to the suit property.

4. The learned Judge of the Trial Court in passing the impugned order on the injunction application/Notice of Motion filed by the appellant did not accept the contentions as urged on behalf of the appellant. The learned Judge has prima facie observed that the agreement dated 23.10.1992 was not a concluded agreement. The rights were asserted by the appellant after a long lapse of time. It is also observed that there are also rights of the other co-owners which would be affected by the agreement dated 23.10.1992 and, therefore, the plaintiff would not be correct in asserting that the appellant has some concluded rights under the agreement dated 23.10.1992.

5. The principal grievance as made on behalf of the appellant is that the learned Judge has given a finding that the agreement is not a concluded agreement and, therefore, a serious prejudice would be caused to the appellant-plaintiff in pursuing the suit. It is submitted that there are several aspects which are required to be gone into and which would show that the appellant-plaintiff had rights to assail the conveyance dated 29.11.2007 granted in favour of respondent No.2 by respondent No.1.

6. I have perused the impugned order. I have also perused the other documents produced on record and having considered the submissions as made on behalf of the parties, I am not inclined to accept

the submissions as urged on behalf of the appellant. In my opinion there is no reason for the appellant to presume that the observations in the impugned order would adversely affect the contentions as the appellant would urge in adjudication of the suit. This for the reason that the observations as made by the learned Judge in passing the impugned order are on the injunction application. Admittedly, these are prima facie findings based on the material which was available on the record at the stage of injunction application for deciding as to whether the appellant-plaintiff would be entitled for a temporary injunction as prayed for. The appellant-plaintiff, therefore, would not be correct in contending that these observations in any manner would affect the contentions of the appellant which the appellant would urge in the final adjudication of the suit.

7. In view of the above observations, the impugned order does not call for any interference however subject to the above observations. The appeal is, accordingly, dismissed.

8. In view of the dismissal of the appeal, civil application No.407 of 2016 does not survive and stands disposed of.

9. Needless to observe that the learned Trial Judge shall decide the suit on its own merits without being influenced by the observations made in the impugned order.

10. All contentions of the parties on merits are kept open to be raised in the suit.

[G. S. KULKARNI, J.]