

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

***APPEAL FROM ORDER NO. 843 OF 2014
ALONG WITH
CIVIL APPLICATION NO. 1021 OF 2014***

1. Dunda Narayan Joshi & ors.
All residing at Temghar,
Tal. Bhiwandi, Dist. Thane.

... Appellants/Applicants
(Ori.Def.Nos.1, 33 to 36)

v/s

1. M/s.Prithvi One Real Estate P. Ltd.,
Office at Ramji House, Jambhulwadi,
Kalbadevi, Mumbai – 400 002; & ors. ... Respondents

Mr.Prasad Dhakephalkar, senior advocate i/by Amol P. Mhatre and
Dilip Shinde for the appellants/applicants.

None present for the respondents.

Coram: N.M. Jamdar, J.

Dated: 21 June 2016

ORAL ORDER:

The Appellants challenge the order passed by the learned Civil Judge, Senior Division, Bhiwandi, dated 16 April 2014, restraining the Appellants from creating third party rights in respect of the suit property till conclusion of the trial. The present appeal is filed by

Defendant Nos.1 and 33 to 36. The Plaintiff/Respondent No.1 filed Special Civil Suit No.341 of 2011 for specific performance of an agreement. According to the Respondent/Plaintiff, registered agreement was executed, substantial consideration was paid to the Appellants, and the Appellants have committed breach of agreement of sale to transfer the property.

2 In this suit, an application for interim relief was taken out. Before the learned Civil Judge, the Appellants placed on record details of the cheque payments made to the Appellants. The cheque payment shows that the amount paid to the Appellants is substantial. The Appellants, in fact, sought to create third party rights in favour of Defendant Nos.45 and 46. As regard Defendant Nos.45 and 46, the Appeal from Order No.1888 of 2004 was filed and is subsequently withdrawn. Thus, Defendant Nos.44 to 46 in whose favour the property was sought to be alienated and who were put into restraint from creating third party rights, had approached this Court and the appeal was withdrawn.

3 Considering the large number of Defendants and the fact that substantial amount of consideration is paid by way of a cheque, the use of discretion by the learned Civil Judge in putting the Appellants under restraint from not creating third party rights to avoid further complications, cannot be faulted. Learned senior advocate for the Appellants submitted that, that being the position, it will be

appropriated if the Plaintiffs are also put under restraint from creating third party rights. No such prayer was made before the learned Trial Judge. If such an application is taken out by the Appellants, it will be considered on its own merits by the learned Trial Judge.

4 In the circumstances, no case is made out for interpretation in the discretion executed by the learned Trial Judge.

5 The appeal is dismissed.

6 In view of disposal of the appeal, the civil application is disposed of.

(N. M. Jamdar, J.)