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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1086 OF 2015
WITH
CIVIL APPLICATION NO.1333 OF 2015

Sanjay P. Kalate	...Appellant
V/s.	
Bhikoba K. Bhujbal & Ors.	...Respondents

Mr.A.V. Anturkar, Senior Counsel i/b Mr.Sandeep Salunkhe for the Appellant.

Mr.Shailesh Chavan for the Respondent Nos.1 to 5 and 8.

CORAM : R.D. DHANUKA, J.
DATE : 7TH DECEMBER, 2016.

P.C. :-

1. By this appeal from order, the original plaintiffs have impugned the order dated 10th August, 2015 passed by the learned Civil Judge, Senior Division, Pune, rejecting the application (Exhibit – 5) filed by the plaintiffs in a suit for specific performance, permanent injunction and mandatory injunction.

2. It was the case of the plaintiffs that the suit property was joint property of the defendant nos.1 and 2. The defendant no.1 was in need of funds for satisfying hand loan, expenses of education and marriage of the family members and decided to sell the property to

the plaintiffs. The plaintiffs alleged to have paid certain amounts to the defendants. The application (Exhibit – 5) was resisted by the defendant nos.1 to 7 in the trial Court by filing the detailed affidavit in reply. It was the case of the defendant nos.1 to 7 and 10 to 12 that they had already executed a registered Development Agreement in favour of the defendant no.13. Prior to the execution of the Development Agreement, a public notice was issued in daily Prabhat inviting objections from the members of public. The defendant no.13 has already completed the transaction in view of there being no objection raised by any member of public, including the plaintiffs.

3. I have perused the impugned order passed by the learned trial Judge with the assistance of Mr.A.V. Anturkar, learned senior counsel for the plaintiffs.

4. A perusal of the record indicates that the defendant no.13 after entering into a registered Development Agreement dated 17th March, 2013 applied for permission to the Pimpri – Chinchawad Municipal Corporation, who had issued the commencement certificate. The defendant no.13 has carried out the construction on the suit plot and has almost completed the construction.

5. The learned trial Judge has also considered the notice issued by the plaintiffs and has *prima-facie* held that the case of the plaintiffs was inconsistent. The learned trial Judge has also held that

the plaintiffs had not made out any *prima-facie* case and balance of convenience was not in favour of the plaintiffs. The defendant no.13 has invested huge amount in the property.

6. I do not find any infirmity in the order passed by the learned trial Judge. The construction is almost completed by the defendant no.13. No objection was raised by the plaintiffs in response to the public notice issued by the defendant no.13. The Development Agreement executed with the defendant no.13 is a registered agreement.

7. I therefore, pass the following order :-

- a). Appeal from Order No.1086 of 2016 is dismissed.
- b). In view of dismissal of the appeal from order, Civil Application No.1333 of 2015 does not survive and is accordingly dismissed.
- c). No order as to costs.

(R.D. DHANUKA, J.)