

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

**APPEAL FROM ORDER NO.259 OF 2015
along with
CIVIL APPLICATION NO.323 OF 2014**

Ravindra Babulal Tapadia .. Appellant
Vs.
Avinash Prabhaka Alate & Ors. .. Respondents

Mr.Rahul Kadam for the Appellant.
None for Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 14th September 2016

P.C.

. By this appeal, the appellant (original plaintiff) has impugned the order dated 29th September 2014 passed by the Civil Judge, Senior Division, Pune rejecting the application for interim relief below Exhibit-5. The plaintiff has filed a suit for specific performance based on alleged oral agreement dated 16th October 2011.

2. I have heard the learned counsel appearing for the appellant and have perused the annexures to the plaint including the impugned order passed by the learned trial Judge. It was the case of the plaintiff that Smt.Vasundhara Prabhakar Alate was the owner of the suit plot bearing Plot No.5 C admeasuring 4168 sq.ft. in “Shree Ganesh Krupa Sahakari Gruha Rachana Santha Maryadeet” situated at Survey No.91/1, Kothrud, Taluka Haveli, District Pune. It was the case of the plaintiff that in second week of October 2011, the plaintiff entered into an oral

agreement to sell with the defendant no.2 who was alleged to be the constituted attorney. The said Smt.Vasundhara Prabhakar Alate alleged to have agreed to sell the suit property in favour of the plaintiff for consideration of Rs.1,60,00,000/-. The plaintiff alleged to have paid a sum of Rs.1,11,111/- vide cheque No.313802 dated 16th October 2011.

3. A perusal of the impugned order passed by the learned trial Judge indicates that the learned trial Judge after considering the averments made in the plaint has rendered a prima facie finding that there was absence of material facts as well as material particulars about the alleged oral agreement in the plaint. The averments made in the plaint were totally vague and unspecific. There was total inconsistency in the case put forth in the plaint, the quantum of amount of earnest money offered, the price of property etc. makes the complete case improbable to succeed. The learned trial Judge came to a prima facie conclusion that there was no concluded contract between the parties and has refused to grant any ad-interim relief.

4. It is not in dispute that the original owner expired on 19th November 2011 i.e. within about one month of the alleged oral agreement for sale alleged to have been entered into by the constituted attorney in favour of the plaintiff.

5. With these facts in hand, in my view, the learned trial Judge is right in rejecting the application for interim relief. There is no infirmity found with the order passed by the learned trial Judge.

6. Appeal is totally devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.