

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.282 OF 2016
IN
NOTICE OF MOTION NO.159 OF 2014
IN
SUIT NO.137 OF 2013

M/s.Castor N. Pollock and others

Appellant

versus

Sitaram Soma Dhanu and others

Respondents

Mr.Yadunath Bhargavan i/by R.Bhargavan & Associates for
Appellant.

Mr.Snehal Shah with Ms.Dipti Panda i/by Vasant Dhawan for
Respondents.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

DATE : 05th April 2016

PC :

1. Heard learned counsel for the Appellants. The Appellants are the original Plaintiffs. By the impugned order dated 6th April 2015, the learned Single Judge has declined to grant the prayer for interim relief in the Notice of Motion taken out by the Appellants-Plaintiffs.

2. The suit for specific performance of unstamped agreement dated 17th March 2007 was filed by the Appellants in September-2013 in which a Notice of Motion for temporary injunction was filed on 28th November 2014. The learned Single Judge in paragraph 5 of the impugned order has granted liberty to the Appellants to apply after the agreement is stamped.

3. The submission of learned advocate for the Appellants is that prima facie observations made by the learned Single Judge in paragraph 1 of the impugned order that the Appellants have done nothing after making a part payment, is factually incorrect as in the facts of the case, there was nothing further required to be done by the Appellants. He submitted that this prima facie finding will come in the way of the Appellants. The submission is that the said prima facie finding was not at all warranted.

4. We have considered the submissions. By the impugned order, discretionary relief of grant of prohibitory as well as mandatory temporary injunction pending the suit, has been rejected by the learned Single Judge. We have perused the averments made in the plaint. As stated earlier, the suit was filed in September-2013. The averments made in the plaint itself disclose that on 3rd December 2010, the Respondents/Defendants had shown willingness to get the suit agreement registered. Learned Single Judge has, therefore,

observed in paragraph-1 of the impugned order that after making part payment on 19th November 2007, the Appellants have done nothing. Moreover, in paragraph-2 of the impugned order, the learned Single Judge has held that the Respondents-Defendants entered into a registered deed of conveyance on 28th March 2011. The only error pointed out by the learned counsel for the Appellants as regards observations in paragraph-2 of the impugned order is that the public notice dated 19th March 2011 was not issued by the Respondents.

5. In the Notice of Motion taken out in the year 2014, the Appellants had sought for grant of an injunction restraining the Respondents from creating third party rights. The third party rights were already created on 28th March 2011. The second prayer was for grant of mandatory injunction directing the Respondents to register the suit agreement. The third prayer was for taking a drastic action of appointment of the Court Receiver.

6. We find nothing wrong with the impugned order by which discretionary and equitable relief was denied by the learned Single Judge to the Appellants. There is no merit in the appeal and the same is dismissed.

7. We make it clear that the observations made by the learned Single Judge in the impugned order as well as by this

Court in the present order, are for the limited purposes of examining the prayers for interim reliefs. All contentions of the parties in the pending suit are kept open.

(PD.NAIK, J.)

(A.S.OKA, J.)

MST