

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO.805 OF 2016**

Neelesh Satish Kanade

...Appellant

Versus

Ramchandra Shankarrao Mate and Ors.

...Respondents

.....

Mr.Yashodeep Deshmukh i/b Mr. Subhash Hulyalkar for the
Appellant.

Mr.S.S.Kanetkar for the Respondent Nos.1 and 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.**DATED: 30th JUNE, 2017.****P.C.:-**

- 1) By consent of the parties the appeal is taken up for hearing at the stage of admission.
- 2) The Appellant, who is Defendant No.1 in Special Civil Suit No.1405 of 2014 has challenged the order dated 30th November, 2015 whereby, the learned 8th Joint Civil Judge Senior Division, Pune allowed the application for temporary injunction filed by the Respondent/Plaintiff and thereby restrained him and the other Defendants from alienating, selling or transferring the suit property and from disturbing the peaceful possession and enjoyment of the Plaintiff in respect of the suit property till the disposal of the suit.

- 3) The Respondents Nos.1 to 3 were the Plaintiffs, Appellant was the Defendant No.1 and the Respondent Nos.4 to 5(b) were the Defendant Nos.2, 3, 3(a) and 3(b) in the suit and shall be herein after referred to as the Plaintiffs and the defendants respectively.
- 4) Heard Mr.Yashodeep Deshmukh, the learned Counsel for the Defendant No.1. He has submitted that relying upon the two letters dated 09.04.2009 and 15.07.2009 the learned trial judge has held that there was an agreement between the parties, whereby the Defendant No.1 had agreed to pay Rs.7 crores from the sale consideration of the suit property and that the balance amount of Rs.3,50,000/- would be paid by cheque. The learned Counsel submits that the learned judge has granted interim relief on the ground that despite the said agreement the Defendant No.1 has alienated a part of the suit property and is attempting to alienate the remaining part of the suit property. The learned Counsel submits that the said letters do not create a charge in terms of Section 100 of the Transfer of Property Act. The learned trial judge therefore could not have granted any relief on the basis of the said letters.
- 5) The learned Counsel for the Defendant No.1 submitted that the Plaintiffs were admittedly not in possession of the suit property and as

such the learned trial judge could not have directed the Defendants not to interfere or disturb the possession of the Plaintiffs in respect of the suit property. The learned Counsel further submitted that the Defendant No.1 had approached the Court after considerable delay and that the learned trial judge was therefore, not justified in granting equitable relief. The learned Counsel for the Defendant No.1 submits that the order is perverse and reflects total non application of mind.

- 6) Mr.S.S.Kanetkar, the Learned Counsel for the Plaintiffs conceded that the Plaintiffs were not put in possession of the suit property and as such the relief under para 38 (3) could not have been granted. The learned Counsel for the Plaintiffs submits that the Defendant No.1 had admittedly signed the letters dated 09.04.2009 and 15.07.2009, whereby he had agreed to sell the suit property and repay the amount to the Plaintiffs. He has submitted that the Defendant No.1 has sold a part of the suit property to the Defendant No.3, despite which he has not paid the money to the Respondent. The learned Counsel submits that the act of the Defendant No.1 can be construed as a breach of agreement. The learned Counsel submits that the Plaintiffs had established prima facie case and considering that the Defendants were proposing to sale the suit property, the learned judge was justified in granting the interim relief.

7) I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. The records reveal that the Plaintiffs had filed the suit for recovery of Rs.20,84,87,500/- and had sought a declaration that they had charged over the suit property. It is the case of the Plaintiffs that they had entered into a memorandum of understandings (MOU) dated 14.09.2006 for purchase, sell and develop certain properties and carry out construction in the said properties in the name of NKG Ram Mate Associates. The Plaintiffs claim that the Defendants Nos.1 and 2 had agreed to sale some properties described in annexure 1 to the said MOU and thereby repay the loan. The Plaintiffs have claimed that the Defendant No.1 had agreed that the suit property would be a security towards repayment of the loan owed by him to the Plaintiff.

8) The records prima facie reveals that the Defendant No.3 had published a public notice dated 26th January, 2011, wherein he had disclosed his intention to purchase the suit property and called for objections, if any, from the members of public. It is not in dispute that the Plaintiffs had not raised any such objections. The records reveal that the Defendant No.1 had sold the suit property to the Defendant No.3 by deed of sale dated 14.02.2012 and had put the Defendant No.3 in possession of the suit property. The Plaintiffs were

therefore not in possession of the suit property and as such the learned judge was not justified in directing the Defendants not to cause any disturbance to the peaceful enjoyment and vacant possession of the Plaintiffs in respect of the suit property.

9) The averements in the plaint do not prima facie indicate that there was any writing between the Plaintiffs and the Defendant Nos.1 and 2 creating any charge in respect of the suit property, within the meaning of Section 100 of Transfer of Property Act. The letters dated 9.4.2009 and 15.7.2009, which have been placed on record, prima facie do not create charge or any other right in respect of the suit property in favour of the Plaintiffs. Hence, the learned Judge could not have granted the relief on the basis of these letters.

10) It is also to be noted that the MOU was executed in the year-2006. The two letters on the basis of which the Plaintiffs had claimed relief are of the year 2009, whereas, the application for injunction was filed in the year 2014. As rightly contended by the learned Counsel of the Defendant No.1 that there was inordinate delay in seeking the interim relief. The delay in approaching the Court also would not justify grant the equitable relief. Considering the above facts and circumstances, in my considered view, the impugned order is arbitrary, illegal and perverse and the same cannot be sustained.

- 11)** Under the circumstances and in view of discussion supra Appeal From Order No.805 of 16 is allowed. The impugned order dated 30th November, 2015 is set aside consequently the application for temporary injunction (Exh.5) in Special Civil Suit No.1405 of 2014 stands dismissed. No order as to costs.

(ANUJA PRABHUDESSAI, J.)