

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.467 OF 2015**

NEST INDIA Builders and Developers ...Appellant

Versus

Pandurang Laxman Dhone, since deceased
through Legal Heirs -

1A) Smt. Barkubai Pandurang Dhone & Ors. ...Respondents

.....

Mr. G.S. Godbole i/b. Mr. Parag M. Tilak for the Appellant.

Mr. Siddheshwar N. Biradar for the Respondent Nos.1A to 1C,
2 to 11, 13 to 15, 17A to 17 D, 18 to 23 and 34.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 7th JULY, 2017.

P.C.:-

Heard Mr. Godbole, the learned counsel for the Appellant and Mr. Biradar, the learned counsel for the Respondents. I have perused the records and considered the findings rendered by the learned Trial Judge.

2. The Appellant herein is seeking to restrain the Respondents from transferring or creating any third party right in respect of the suit property, which is more particularly referred in the paragraph 2 of the plaint. The Appellant has claimed rights to the suit property based on an agreement dated 15th June, 1997. The material on record prima facie indicates that the Respondent Nos.21 to 23 who were the owners

of the property had already transferred the suit property in favour of the Respondent Nos.25 to 29 in the year 2010 and the Respondent Nos.28 and 29 have further transferred the land in favour of the Respondent Nos.30 to 33. The material on record indicates that the Appellant had consented to the said transfer and had accepted the consideration. In the light of this fact, in my considered view, the learned Judge was justified in holding that the Appellant-Plaintiff has failed to establish the prima facie case. The delay in approaching the Court and the conduct of the Appellant does not justify grant of equitable relief. The Findings of the Trial Court are neither perverse nor arbitrary and hence, do not warrant interference. Hence, the Appeal has no merits and is hereby dismissed.

3. It is made clear that these observations are prima observations and not expression on merits of the matter. It therefore, follows that the learned Trial Judge shall decide the suit on its own merits without being influenced by the observations of this Court or by the observations made in the impugned order.

4. In view of the dismissal of the Appeal from Order, the Civil Application does not survive and hence, stands disposed of.

(ANUJA PRABHUDESSAI, J.)