

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

APPEAL FROM ORDER NO. 698 OF 2014

Kishor Kaluram Chaudary & Anr.

..Appellants
(Org. Plaintiffs)

v/s.

Jamnabai Baban Kotekar & Ors.

..Respondents
(Org. Defendants)

Mr. Sachin Punde for the Appellant no.1

Mr. Omkar Gupte for the Respondent No.6.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 14th JUNE, 2017.

P.C.

1. Rule. Rule made returnable forthwith. With consent of the parties, taken up for final hearing at the stage of admission.
2. The appellants herein who were the original plaintiffs in Civil Suit No42 ao-st-8384-16.604 of 2007 pending on the file of Civil Judge, Junior Division, Ulve, Panvel, have challenged the order dated 13th March, 2013 whereby the learned Judge dismissed the application for injunction.
3. Heard the learned Counsel for the appellants and the learned

Counsel for the respondent .

4. The records prima facie reveal that the appellants herein has entered into an agreement dated 15th February, 2007 with the respondent nos.1 to 4 in respect of the property admeasuring 850 sq. meters of plot no.168 situated at Section 9. Ulve, Panvel. It is not in dispute that the said agreement was not registered. It is also not in dispute that the appellants had filed a suit for specific performance of the said contract. During the pendency of the suit, the respondent nos.1 to 4 sold the said land to the respondent no.6 vide agreement dated 14th September, 2009. The appellant therefore impleaded the said respondent and amended the pleadings so as to seek relief of injunction restraining the respondent no.6 from transferring, alienating or creating third party interest in respect of the said plot.

5. The impugned order as well as the averments made by the respondent no.6 indicate that the respondent no.6 has already completed construction during the pendency of the suit. It is also submitted that occupancy certificate was issued in the year 2016 and the purchasers have already been put in possession in respect of the flats and shops constructed on the said plot. The transfers having

been effected Pendent lite, the same would be governed by provisions of Section 52 of Transfer of Property Act. Furthermore, it is stated that the issues are already settled and the suit is ready for trial. In the light of the above, the findings of the learned Judge on the point of balance of convenience are neither perverse nor illegal .

6. Considering, all these facts, I do not find any justifiable reason to interfere with the order. Hence, the appeal from order is dismissed. Rule discharged.

(ANUJA PRABHUDESSAI, J.)