

Anand

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

WRIT PETITION NO.7527 OF 2015

Uttam Ramchandra Pawar

.Petitioner

Vs.

Smt. Janabai Prakash Mahajan & ors.

.Respondents

Mr. A.K.Patil, Advocate, for the Petitioner

Mr. M.M.Sathye, Advocate, for the Respondents

CORAM : R.G.KETKAR, J.

DATE : 07.03.2017

P.C.

. Heard Mr. Patil, learned counsel for the Petitioner and Mr. Sathye, learned counsel for the Respondents.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Plaintiff ' has challenged the Judgment and Order dated 02.09.2014 passed by the learned 3rd Jt.C.J.J.D., Malegaon, Nashik below Exh.68 in R.C.S. No.383 of 2012. as also the Judgment and Order dated 04.07.2015 passed by the learned Ad-hoc District Judge-1, Malegaon, District-Nashik in Civil Misc. Appeal No.36 of 2014. By these Orders, the Courts below rejected the Application made by the Plaintiff at Exh.68 for injunction restraining

the Defendants from selling the suit property or from transferring the suit property.

3. The Plaintiff has instituted the suit against the Defendants for Specific performance of Agreement dated 14.10.2003. During the pendency of the suit, the Plaintiff took out the Application Exh.5 for a temporary injunction restraining the Defendants from selling the suit property or transferring the suit property. During the pendency of the Application Exh.5, the Plaintiff took out the Application Exh.40 on 20.05.2013 for a temporary injunction from restraining the Defendants from sanctioning a lay out of Survey No.296/4 as also from creating 3rd party interest by selling or transferring it in any manner, during the pendency of the suit. By Order dated 03.06.2013, the learned trial Judge instead of rejecting the Application Exh.40, rejected the Application Exh.5. Aggrieved by this decision, the Plaintiff preferred Civil Misc. Appeal No.18 of 2013. By Order dated 14.08.2013, the learned District Judge dismissed the Appeal. Aggrieved by these Orders, the Plaintiff instituted W.P.No.9847 of 2013. By Order dated 10.02.2014, this Court upheld the Order below Exh.40 and directed the learned trial Judge to decide the Application Exh.5 in R.C.S.No.383 of 2012 independently on its own merits and without being influenced by Order below Exh.40.

The Plaintiff, thereafter, filed a pursis for withdrawal of the Application Exh.5 with liberty to file a fresh Application. Accordingly, the Plaintiff filed the Application Exh.68 on 06.03.2014 for injunction restraining the Defendants from selling or transferring the suit property. By the impugned Orders, the Courts below have dismissed the Application.

4. In support of this Petition, Mr. Patil submitted that the Courts below were not justified in rejecting the Application Exh.68. He submitted that the Courts below held that the document styled as Affidavit-cum-Ratification dated 14.10.2003 cannot be considered as an Agreement for sale as there was dispute inter se amongst the Defendants. The Plaintiff did not institute the suit for specific performance immediately after 14.10.2003. He submitted that basically, approach of the Courts below in rejecting the Application Exh.68 itself is faulty. The Petition, therefore, requires consideration.

5. On the other hand, Mr. Sathye supported the impugned Orders.

6. I have considered the rival submissions advanced by the learned counsel for the parties. I have also perused the material on

record.

7. As noted earlier, the Plaintiff had earlier filed the Application Exh.5 on 30.05.2012. The Plaintiff prayed for injunction restraining the Defendants from selling or transferring the suit property. Although, the Plaintiff filed the Application Exh.40 on 20.05.2013 for injunction restraining the Defendants from sanctioning final lay out and making plots in that Survey number as also from creating 3rd party interest and selling the suit property, perusal of the prayer shows that injunction was sought pending the suit and that not pending Exh.5. It is not in dispute that the Application Exh.40 was dismissed by the learned trial Judge on 03.06.2013. The Appeal against that order was also dismissed on 14.08.2013. By Order dated 10.02.2014, this Court upheld the Order below Exh.40. While rejecting the Application, the learned District Judge in particular has observed in paragraph 10 that the Order below Exh.40 was not interfered with by the High Court and is still in existence. Though the parties can file number of Applications for injunction, if the circumstances change. In the present case, there is no change in the circumstances. In fact, the Plaintiff has no reasonable ground to file an Application Exh.68 again. Considering the prayers made by the Plaintiff in the Applications Exh.5, Exh.40 and Exh.68, I do

not find that the Courts below committed any error in dismissing the Applications for injunction. Apart from this, though the suit is for specific performance of contract dated 14.10.2013, the suit is instituted in the year 2012 that also dis-entitles the Plaintiff for any interim relief. Hence, the Petition fails and the same is dismissed. The learned trial Judge will decide the suit uninfluenced by the observations made in this Order.

(R.G.KETKAR, J.)