

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2088 OF 2018

KADU SAKHARAM DUSING AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Shri Khandagale Patil P.P.

AGP for Respondents 1 to 5 : Shri S.R.Yadav Lonikar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2018

Per Court:

1 The Petitioners / original Defendant Nos.1 to 5 are aggrieved by the judgment and order dated 06.01.2018 delivered by the Appellate Court in Miscellaneous Civil Appeal No.12/2016 by which, these Petitioners have been restrained from alienating / creating third party interest in the suit property and further restrained from creating any charge or executing an agreement to sell or entering into a Sale Deed with regard to the suit property.

2 Specific directions issued by the Appellate Court are reproduced as under :-

"4. *The Respondents are hereby temporarily restrained, until final decision of the suit, from alienating/ creating third party interest in the suit property. Needless to say, no sale deed in pursuance to the*

*agreement to sell in favour of the respondent No.6,
shall be executed until final decision of the suit."*

3 The contention of the Petitioners is that they have executed an agreement to sell on 09.02.2015 by registering the said document in favour of Defendant No.6. The Plaintiffs have come forward with a case that these Petitioners/ Defendants had entered into an agreement to sell with the Plaintiffs on 29.07.2010, which is not a registered document. The Trial Court had, therefore, rejected the application Exhibit-5 and refused temporary injunction to the Plaintiffs. By the impugned order, the Appellate Court has overturned the findings of the Trial Court and while quashing the order of the Trial Court dated 30.03.2016, has erroneously clamped injunction upon these Petitioners.

4 After considering the strenuous submissions of the learned Advocate for the Petitioners and on perusing the petition paper book with his assistance, I find that the Plaintiffs were before the Trial Court seeking part performance of the agreement to sell. It is the contention of the Plaintiffs that the agreement to sell has been partly implemented and the said transaction is not complete as the Defendants have resiled from the stand that has been taken in the said agreement to sell.

5 It is, therefore, obvious that Defendant Nos.1 to 5, who are the Petitioners herein, entered into a registered agreement to sell on 09.02.2015 with Defendant No.6. Though Section 52 of the Transfer of

Property Act would take care of this situation as the lis is pending, the Appellate Court concluded that if the Defendants are permitted to alienate the property or create third party interest or create a charge on the property, it would lead to multiplicity of the litigation. The Appellate Court has prima facie observed that the Plaintiffs have entered into a transaction almost five years prior to the fresh transaction initiated by the Defendants, which prima facie appears to be on account of the pending suit.

6 The learned Advocate for the Petitioners contends that the date on the plaint is 21.02.2015 and as such, the transaction entered into by the Defendants on 09.02.2015 is prior to the institution of the said suit.

7 Notwithstanding the said submissions, it cannot be ignored that there is a distinction between the part performance of the contract and seeking specific performance of the contract, which is to be considered finally by the Trial Court. Creation of third party rights in the suit would eventually lead to multiplicity of the litigation.

8 Taking into account the above aspect and considering the fact that the Plaintiffs, on the one hand, are trying to protect their possession and on the other hand, are attempting to prevent the creation of third party rights, which would result in further complications, I do not find that the impugned order dated 06.01.2018 could be termed as being perverse or erroneous. Considering the balance of convenience and the

possibility of an irreparable loss coupled with serious prejudice, the impugned order appears to be an equitable order.

9 As such, this Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)