

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

CIVIL APPLICATION NO. 7926 OF 2017

IN

FIRST APPEAL NO. 1787 of 2017

Vitthaldas Bhairulal Agrawal & ors.

Applicants.

Versus

Mohanabai Devchand Sale & ors.

Respondents.

Mr. Y.G. Somani, Advocate for the applicants.

Mr. S.E. Siddiqui, Advocate for respondent Nos.1, 2, 7 & 8.

Mrs. A.N. Ansari, Advocate for respondent No.9.

CORAM : **SUNIL K. KOTWAL,J.**

Dated : **12th September 2018.**

PER COURT :-

. This Civil Application is moved to stay the decree passed in Special Civil Suit No.186/2011 and for directions to original respondent Nos.7 and 8 not to create third party interest and to alienate the suit property, till final disposal of the appeal.

2. Heard learned Counsels for the applicants and respondent Nos.7 and 8.

3. Learned Counsel for the applicants points out that the learned trial Court, while answering issue No.1, held that the

defendants committed breach of contract and the suit was dismissed on the ground that the plaintiff cannot prove his readiness and willingness as required under Section 16 (C) of the Specific Relief Act. He submits that status-quo of the suit property was maintained and there will not be any loss to respondent Nos.7 and 8.

4. Contention of the learned Counsel for respondent Nos.7 and 8 is that the impugned agreement of sale was neither registered nor properly stamped. Despite impounding that document, stamp duty was not paid. He submits that the alleged agreement of sale is not admissible in evidence even for collateral purpose. He places reliance on the judgment in the case of **“Yellapu Uma Maheswari and anr. Vs. Buddha Jagadheeswararao and others” (2015 AIR SCW 6184)**.

5. In brief, contention of the learned Counsel for respondent Nos.7 and 8 is that, they being bonafide purchasers, they shall have opportunity to enjoy the suit property as per their sweet will.

6. However, during the course of arguments, learned Counsel for respondent Nos.7 and 8 fairly points out that in Civil Application No.13448/2012, these respondents undertook to maintain status-quo of the suit property, till decision of the suit.

7. In view of this position, it is clear that till decision of the suit, status-quo regarding suit property is maintained by respondent Nos.7 and 8. At this appellate stage, it is not desirable to express myself regarding merits of the matter. However, considering the reasons assigned by learned trial Court for dismissing the appeal, I find that unless the appeal is decided on merits, it will not be proper to allow the respondent Nos.7 and 8 to create third party interest in the suit property or to alienate the same. Therefore, by allowing this application, respondent Nos.7 and 8 are directed not to create third party interest in the suit property and not to alienate the suit property, till final disposal of this appeal.

8. As no executable decree is passed by the trial Court, the question of granting stay to the decree passed by the trial Court does not arise.

9. Civil Application is disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/