

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 939 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 942 OF 2018
IN
APPEAL FROM ORDER (ST.) NO. 939 OF 2018**

Bhupendra T. Devkar ...Appellant

Versus

Sarah Group of Companies & Anr. ...Respondents

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Mr. Bhupesh Dhumatkar i/b. Ms. N.S.Mahadik for the Appellant.
Mr.G.A.Madnani for the Respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JANUARY 12, 2018**

P.C.:

1. This Appeal from Order is directed against the order dated 8th January, 2018 passed by the learned Judge, City Civil Court, Dindoshi in Draft Notice of Motion in Suit No. 3747 of 2017.
2. The appellant/plaintiff has filed the suit for perpetual injunction against the respondents/defendants. The plaintiff has 1/63rd undivided share in the suit property and the respondents, who are

builder/developer, have started demolition of his residence so also other adjoining structures.

3. The learned Counsel for the appellant has submitted that the respondents have played fraud on the appellant though he has accepted Rs. 16 lakhs from the respondents. His sister, who residing at Surat has sold her 1/63rd undivided share to the respondents, which is quantified by her for Rs. 16 lakhs and by way of interim family arrangement, his sister gave him the said consideration amount, so he has accepted Rs. 16 lakhs. He has further submitted that he has never sold or parted with his 1/63rd undivided share in the suit property, which is subject matter of the development. He has further submitted that the right claimed by the respondents/defendants in 1/63rd undivided share is bogus and the said unregistered agreement has no value in the eyes of law. He has further submitted that he has good case under Section 44 of the Transfer of Property Act, 1882 and his structure should have been protected. At present, he is occupying 450 sq.ft. area in the suit plot. Now, the Notice of Motion is fixed on 5th February, 2018 and he be allowed to file rejoinder and be protected till then.

4. Per contra, the learned Counsel for the respondents has relied on the agreement taken place between the appellant and the respondents on 9th March, 2007. He has submitted that the respondents/defendants had paid an amount of Rs. 16 lakhs to the appellant/plaintiff for three times by way of cheques of Rs. 5 lakhs, Rs. 6 lakhs and Rs. 5 lakhs. The said amount was accepted by the appellant/plaintiff in the year 2007.

5. Heard submissions. Perused the impugned order. Also perused the agreement of sale taken place between the appellant and the respondents. This is an agreement of sale of 1/63rd undivided share in the suit property, against which Rs. 16 lakhs was paid by the respondents to the appellant in the year 2007. The agreement says about the development. On all the pages of the agreement, the signature of the appellant is appeared. There is no whisper about the undivided share of the sister, who is residing in Surat, and he has asked to accept the amount on her behalf for her share.

6. Under such circumstances, the finding given by the learned Judge of the trial Court at interim stage is correct. No interference is

required in the order passed by the learned Judge of trial Court.

Hence, Appeal from Order is dismissed.

7. In view of dismissal of Appeal from Order, Civil Application do not survive, hence the same is also disposed of accordingly.

(MRIDULA BHATKAR, J.)