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

APPEAL FROM ORDER NO.442 OF 2017

Suresh Mahadeo Kedari

and ors

... Appellants.

V/s.

Shanu S.A. and ors

... Respondents

Mr. P. B. Shah i/by K.P. Shah, for the appellants.

Mr. Sugandha B. Deshmukh, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the appellants and respondents.

2] By this Appeal from Order, exception is taken to the order dated 27.01.2017, passed by 8th Joint Civil Judge Senior Division, Pune, below Application at Exh.5, in Special Civil Suit No.1378 of 2016.

3] The said application was filed by the present appellants seeking relief of interim injunction restraining the respondent No.1 from creating third party interest in the suit property till the decision of the suit.

4] The case of the appellants is that by virtue of two separate registered sale deeds dated 17.6.2016 and 28.06.2016, appellants

have sold out the suit property to respondent No.1 for valuable consideration. Out of total consideration amount, an amount of Rs.1,84,46,250/- is received by the appellants. However, the cheques issued towards balance consideration amount have been dishonoured. Hence, the appellants were constrained to file suit for partition, claiming right of preemption and for cancellation of the sale deeds.

5] Alongwith the said suit, appellants have also filed an application for interim relief restraining respondent No.1 from creating third party interests in the suit property, till decision of the suit. The trial Court has dismissed the said application, on two counts. Firstly, that there cannot be cancellation of the sale deed for non payment of part of consideration amount and secondly, that the appellants are claiming equitable relief of injunction, and at the same time seeking cancellation of the sale deed and also for partition and right of preemption. The trial Court, therefore, held that the appellants are not entitled to such equitable relief of interim injunction.

6] While challenging this order, the learned counsel for the appellants, specifically, on instructions from appellant Nos. 6 and 19, who are present before the Court, makes a statement at Bar that the appellants are giving up their claim for the relief of partition, right of

preemption and also the relief of cancellation of the sale deeds, if the respondent No.1 is directed to deposit the balance amount of consideration, in the trial Court within some reasonable period and till such amount is deposited, respondent No.1 should not create third party interest in the suit property.

7] Learned counsel for respondent No.1 has resisted this submission by pointing out that there is no amendment in the plaint and mere statement made at Bar cannot be sufficient to grant such relief, which the appellants are seeking in the nature of final relief.

8] However, in my considered opinion, the statement made at Bar by learned counsel for appellants, especially on instructions of the appellants, who are present in the Court, has the legal sanctity and they are bound by the same. Amendment of the plaint to that effect is a mere formality which they are bound to make. Thus, if the appellants do not want to seek the relief of partition, preemption and also of cancellation of sale deeds, the dispute between the parties could be resolved amicably. If the appellants themselves do not want the sale deeds to be cancelled, then respondent No.1, who is opposing the suit, has to perform his part of the contract by depositing the entire balance amount of consideration in the Court and till such amount is deposited, it is equitable that he should not create any third party interest in the suit property. To that extent relief of interim

injunction needs to be granted.

9] Therefore, in view of the statement made at Bar by learned counsel for the appellants, the appeal is allowed.

10] The impugned order passed by the trial Court is set aside. The relief of interim injunction, as prayed by the appellants restraining respondents from creating third party interest in the suit property is granted, for a period of 8 weeks from today during which period, the respondent No.1 to deposit the entire balance consideration amount in the trial Court,

11] If the amount is not deposited within the stipulated period, as ordered by this Court, the order of interim injunction restraining respondent No.1 from creating third party interest in the suit property is to continue till the decision of the suit.

[DR.SHALINI PHANSALKAR-JOSHI, J.]