

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

**APPEAL FROM ORDER NO. 699 OF 2015
WITH
CIVIL APPLICATION NO. 853 OF 2015
IN
APPEAL FROM ORDER NO. 699 OF 2015**

Shri. Dinkar Tukaram Shendage and Anr.Appellants
V/s.
Madhukar Babaji Sampakal & Ors.Respondents

Mr. R.A. Naik i/b. Umesh R. Mankapure for the appellants.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 04th APRIL, 2018.**

P.C.:

. Heard the learned counsel for the appellants.

2. By this appeal, the appellants (defendant nos.1 and 2 in the suit) have challenged the order dated 09th January, 2015 whereby the learned Civil Judge, Senior Division, Sangli has allowed the application for temporary injunction (Exhibit 5) in Special C.S. No.225 of 2012.

3. The respondent no.1 (plaintiff) has filed a suit for specific performance of an agreement dated 15th April, 2011. The case of the respondent no.1/plaintiff in brief is that the appellants herein had

agreed to sell to them the property bearing Gut No.273 admeasuring 8 hectares 75 Are situated at Morale, Taluka Palus, Dist. Sangli, for a total consideration of Rs.1,19,00,000/-. The said property shall be hereinafter referred to as 'the suit property'. The respondent no.1 has paid Rs.20,00,000/- as a part consideration. The sale deed was to be executed on 15th April, 2011. However, the appellants failed to execute the sale deed in favour of the respondent no.1 (plaintiff) and on the contrary sold the suit property to the respondent no.2 and 3 who are the original defendant nos.3 and 4 in the suit.

4. The appellants had denied having executed any agreement in favour of the respondent no.1 (plaintiff) and or having received any part consideration. The respondent nos.2 and 3 claimed that they have purchased the property from the appellants by deed of sale dated 24th April, 2012 for consideration of Rs.32,00,000/-. These respondents claimed that they have been put in possession of the suit property and that they are the bonafide purchasers without notice.

5. The learned Judge upon considering the material on record has held that the agreement in favour of the respondent no.1 (plaintiff) was prior in point of time. The learned Judge held that the respondent

no.1 (plaintiff) has made out *prima facie* case and that transfer of property will lead to multiplicity of proceedings.

6. I have considered the submissions of the learned counsels for the respective parties and also gone through the impugned order.

7. The respondent no.1 (plaintiff) has placed on record copy of the agreement dated 15th April, 1991 which *prima facie* indicates that the appellants herein had agreed to sale the suit property to the respondent no.1 (plaintiff) for Rs.1,19,00,000/-. The material on record also *prima facie* indicates that the respondent no.1 had paid to the appellants an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) towards part of the sale consideration. The material on record *prima facie* indicates that the appellants herein, in breach of agreement, sold the property to the respondent nos.2 and 3.

8. In the light of these *prima facie* circumstances, the learned Judge has granted interim relief and thus restrained the respondents from alienating the property during the pendency of the suit so as to avoid multiplicity of proceedings. Findings recorded by the learned Judge are neither arbitrary nor perverse. In the light of the principles laid down

in *Wander Ltd. V/s. Antox India Pvt. Ltd 1990 SCC 727*, this is not a fit case to interfere with the discretion exercised by the learned Judge. Under the circumstances and in view of the discussion supra, the appeal has no merits and is dismissed. Civil Application does not survive in view of dismissal of the appeal.

9. It is made clear that the *prima facie* findings rendered in this order are confined to the appeal. The trial court shall decide the suit on the basis of the end that may be adduced and in accordance with law without being influenced by these *prima facie* findings.

(SMT. ANUJA PRABHUDESSAI, J.)