

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

**APPEAL FROM ORDER NO.1045 OF 2016
WITH
CIVIL APPLICATION NO.1321 OF 2016
IN
APPEAL FROM ORDER NO.1045 OF 2016**

Amit Jaipal Uttarsen Jain & Ors. ...Appellants
Versus
Ramesh Baburao Patil & Ors. ...Respondents

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Mr. M.M. Vashi, senior advocate with Ms Aparna Devkar i/b. M/s M.P. Vashi and Associates for the Appellants/Applicants.
Mr. Rajendra B. Mokashi for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 26th MARCH, 2018.

P.C.:-

Heard. The Respondents waive service. By consent the matter is heard finally at the stage of admission.

2. I have perused the records. The records prima facie reveal that the original plaintiffs (Respondent No.1 to 3) and Defendant Nos.1 to 7, who are Respondent Nos. 4 to 10 in this appeal had entered into an agreement dated 30.10.2007 for purchase of the suit premises for consideration of Rs.62,70,000/-. The Plaintiffs claimed that they had paid part consideration of Rs.32,40,000/- and were ready and

willing to pay balance amount upon the property being surveyed. The Plaintiffs alleged that the Defendants failed to execute the sale deed and therefore filed a suit for specific performance. The Plaintiffs had also filed an application for injunction seeking to restrain the Defendants from transferring or alienating the property to the third person, pending disposal of the suit. Upon being served with the notice, the Defendant Nos.1 to 7 put in their appearance on 28.2.2010 and made a statement that they would not transfer or alienate the suit property in favour of any third party. The records reveal that in view of the said statement no further order was passed on injunction application. The records reveal that during the pendency of the suit, the Defendant Nos.1 to 7 in total violation of the said undertaking, transferred the suit property in favour of the present Appellants, who were subsequently impleaded in the suit as Defendant Nos.8 to 10. It was under these circumstances that the Respondent No.1 was compelled to file a motion seeking to restrain present Appellants from transferring the property in favor of the third person and from changing the nature of the suit property.

3. Mr. Vashi, the learned senior counsel for the Appellant submits that plaintiff Nos.2 and 3 had filed an application for

withdrawal of the suit before the Court. It is to be noted that the learned Judge had not passed any order on the withdrawal application. Furthermore, the Plaintiff No.1 was not a signatory to the said application and it was not permissible for the Plaintiff Nos.2 and 3 to withdraw the suit. Hence the Plaintiffs who were not interested in continuing with the suit could at the most be transposed as Defendants. The material on record prima facie indicates that the Defendant Nos.1 to 7 had agreed to sell the suit property to the Plaintiffs. These Defendants had received part consideration and had further agreed not to alienate the property during pendency of the suit. The records prima facie indicates that the Defendant Nos.1 to 7 had sold the property to these Plaintiffs during the pendency of the suit and in violation of the undertaking.

4. Under the circumstances, equity is not in favour of the Appellants (Defendant Nos.4 to 10). The Plaintiffs having made out all the essential ingredients viz. prima facie case, balance of convenience and hardship, the learned Judge was justified in granting the interim relief. The findings are neither arbitrary nor perverse and hence, do not warrant interference.

5. Under the circumstances, the appeal from order is dismissed.

6. In view of dismissal of the appeal from order, this civil application does not survive and hence, stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)