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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.72 OF 2018

Smita Harsh Bhosale & Anr. ...Appellants
vs.
Kisan G. Hirani & Ors. ...Respondents

Mr.S.M.Gorwadkar, Senior Counsel a/w Mr.Niranjan
Mogre for the appellant
Mr.Abhishek Pungliya for the respondent Nos.1 to 3.

CORAM : A.S.OKA, &
M.S.SONAK,JJ.
DATE : SEPTEMBER 12, 2018

P.C.:

1 Heard the learned senior counsel for the appellants. The appellants are the defendant Nos.3 and 4 in a suit filed by the respondent Nos.1 to 3. The suit is in respect of a flat at Bandra, Mumbai more particularly described in the plaint. The suit is for specific performance of the agreement for sale in respect of the suit flat executed by the respondent Nos.3 to 6 (defendant Nos.1 to 3) in favour of the respondent Nos.1 to 3 (original plaintiffs).

2 For the sake of convenience, we are referring the parties with reference to their status before the learned Single Judge.

3 In the suit for specific performance, it is

contended by the plaintiffs that the agreement for sale is reflected in a writing executed on 23rd August 2007 and that a sum of Rs.1 crore out of total consideration of Rs.1.30 crores has been duly paid by the plaintiffs to the defendant Nos.1 to 3. After filing of the suit, the plaintiffs learnt that the rights have been created in favour of the defendant Nos.4 and 5 (present appellants) and therefore, the defendant Nos.4 and 5 were impleaded as parties. A prayer was incorporated for declaration that the agreement for sale entered into by and between the defendant Nos.1 to 3 and defendant Nos.4 and 5 in respect of the suit flat is illegal, ab-initio void etc. A Notice of Motion for interim relief was taken out by the plaintiffs. Impugned order dated 11th July 2017 has been passed by the learned Single Judge by which prayer for interim injunction in terms of prayer clause (a-1) has been granted. By the said prayer, the defendants have been restrained from creating third party rights and from alienating the suit flat.

4 The submission of the learned counsel for the appellants (defendant Nos.4 and 5) is that they are bonafide purchasers. His submission is that the alleged agreement of which a specific performance is sought is not a registered agreement. His contention is that the defendant Nos.4 and 5 after doing verification of the title of the defendant Nos.1 to 3 entered into the registered agreement for sale in respect of the suit flat. He further

submitted that the flat is given by way of security to H.D.F.C for loan taken by the defendant Nos.4 and 5. He submitted that the finding recorded by the learned Single Judge in paragraph 3 that the defendant Nos.4 and 5 were not bonafide purchasers is completely erroneous and in fact they had no knowledge of alleged agreement subject matter of the suit.

5 We have considered the submission. The plaintiffs are seeking a Decree directing the defendant Nos.1 to 3 to execute a regular agreement for sale in respect of the suit flat. Their case is that writing dated 23rd August 2007 executed by the defendant Nos.1 to 3 shows that there is an agreement for sale in respect of the suit flat in favour of the plaintiffs under which consideration of Rs.1 crore out of total consideration of Rs.1.30 crores has been paid.

6 Agreement executed in favour of defendant Nos.4 and 5 in respect of the suit flat is of 28th August 2009. The claim of the defendant Nos.4 and 5 is that the agreement was executed after the agreement executed in favour of the plaintiff was terminated by a letter dated 17th October 2008.

7 To the agreement for sale dated 28th August 2009 executed in favour of the defendant Nos.4 and 5, a title certificate issued by the Advocate to the defendant No.1 is annexed. The said title

certificate refers to suit No.2372 of 2008 pending in this Court. The learned Single Judge in paragraph 3 has observed that in the said suit, affidavits were filed by the defendant Nos.1 to 3 in the present suit in which it was specifically set out that the suit flat was agreed to be sold to the plaintiffs and in fact consideration paid is also reflected.

8 The defendant Nos.4 and 5 were put to notice by the title certificate annexed to the agreement about the pendency of the suit. Therefore, before entering into agreement, the defendant Nos.4 and 5 ought to have taken inspection of the proceedings of the suit, and that is how a prima facie finding has been recorded by the learned Single Judge that defendant Nos.4 and 5 are not bonafide purchasers. We find no error in the said prima facie finding recorded by the learned Single Judge. Even according to the case of the defendant Nos.4 and 5, they are in possession of the suit flat. By the impugned order, they have been restrained from creating third party rights pending a substantive suit for specific performance. We find that a discretionary and equitable interim order has been passed. It is obvious that prima facie findings recorded in the impugned order as well as this order are for limited purpose of considering the prayer for interim injunction. All contentions of the parties remain open in the pending suit.

9 Subject to what is observed above, Appeal is dismissed. Pending Notice of Motion does not survive and the same is disposed of.

(M.S.SONAK,J.)

(A.S.OKA,J.)