

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.248 OF 2018
WITH
CIVIL APPLICATION NO.322 OF 2018
IN
APPEAL FROM ORDER NO.248 OF 2018**

Shri Dharmendra P. Vyas And Anr.

...Appellants
(Original Plaintiffs)

vs.

Shri Nitin S. Sane And Ors.

...Respondents
(Original Defendants)

.....

Mr. Karl F. Tamboly, a/w. Ms. Mona D. Vyas and Mr. M.H. Ansari, i/b. M.A. Dudhane, for the Appellants.

Mr. Atul Damle, Senior Advocate, a/w. Mr. Sanjeev R. Singh and Mr. Ritesh A. Singh, for Respondent Nos. 1 to 6.

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CORAM : S.C. GUPTE, J.

DATED : 7 OCTOBER 2019

P.C. :

. This appeal from order challenges an interlocutory order passed by the City Civil Court at Mumbai at its Borivali Division at Dindoshi on a notice of motion taken out by the Appellants (original plaintiffs). By the impugned order, the plaintiffs' notice of motion was dismissed by the City Civil Court.

2. The plaintiffs went to the Court with a case that they hold an agreement of assignment in respect of the suit property from

Respondent No.1 herein (original defendant no.1), who is one of the co-owners of the suit property. It is submitted that defendant no.1 entered into this agreement not only on his behalf but also on behalf of defendant no. 2 as also defendant no.3, who had executed a power of attorney in his favour to do so. It is the grievance of the plaintiffs that contrary to this assignment, defendant nos. 1 to 6 are purporting to create rights in the suit property in favour of defendant no.7. The suit seeks specific performance of the agreement for assignment and, in the meantime, seeks to restrain the defendants from creating any third party rights in respect of the suit property. The trial court has rejected the notice of motion mainly on the ground that the agreement for assignment as also the power of attorney appeared to be fabricated documents. Apparently, the only basis for holding so is the date of the stamp paper and the defendants' story that the stamp paper was purchased for another purpose.

3. On the facts alleged before the Court, *prima facie* the plaintiffs appear to have a case for protection. After all, the plaintiffs went to the Court with a case for specific performance of an agreement for assignment executed in their favour by defendant no.1. *Prima facie*, there is documentary evidence that defendant nos. 2 and 3 had conferred a power to create rights on their behalf on defendant no.1. On these facts, the Court should have at least protected the plaintiffs' rights to the extent of $\frac{1}{2}$ of the share in the suit property, since defendant nos. 1 to 3 represented that $\frac{1}{2}$ share. *Prima facie* protective relief is usually granted to the plaintiff on the footing that his case deserves to be heard at the trial and pending hearing of such case,

subject to considerations of balance of convenience and irreparable injury, the plaintiff's rights need to be protected so that he is not presented with *fait accompli* at the hearing of the suit. The plaintiffs in the present case, thus, *prima facie* deserved a protection. The appeal from order deserves to be admitted with interim relief to follow in favour of the Appellants/plaintiffs.

4. Considering, however, that the suit is of the year 2016, and for the last over two years, there has been ad-interim injunction in favour of the plaintiffs, learned Counsel for both parties agree that the hearing of the suit itself may be expedited and, in the meantime, ad-interim protection to the extent of ½ of the suit property may be continued.

5. Accordingly, the impugned order dated 11 December 2017 is quashed and set aside. There will be an interim injunction restraining the defendants from transferring or alienating or encumbering in any manner or creating third party interest in respect of ½ share in the suit property, i.e. share in the suit property represented by defendant nos. 1 to 3. This shall operate as an interim relief pending hearing and final disposal of the suit. Hearing of Special Civil Suit No.1930 of 2016 is expedited. The trial court is requested to dispose of the suit as expeditiously as possible and preferably within a period of 18 months from the date of this order. Either party may bring an authenticated copy of this order to the notice of the trial court, when a schedule of hearings may be fixed. Learned Counsel for the Appellants/plaintiffs offers to do so. He may proceed accordingly.

6. The appeal from order is disposed accordingly.

7. It is made clear that observations made in this order are merely to decide this appeal from order. The merits of the suit shall be considered by the trial court independently and without being in any way influenced by these observations. All rights and contentions of the parties in that behalf are kept open.

8. In view of the disposal of the appeal from order, the civil application does not survive and is disposed of.

(S.C. GUPTE, J.)