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

**APPEAL FROM ORDER NO. 281 OF 2016  
WITH  
CAA NO. 361 OF 2016**

Laiq Ahmed Rafiq Shaikh & Anr.

**..Appellants**

**Vs**

Ashokkumar Satpal Mehra & Ors.

**..Respondents**

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Mr. P.S. Dani, Senior Advocate a/w Ms. Gargi Bhagwat i/b Divekar Bhagwat & Co for Appellants.

Mr. R.M. Vasudeo for Respondent No.4 in A.O. 281/2016.

Mr. R.R. Sharma a/w Surya Das for respondent Nos.1 and 2 in CAA Nos.633/2016 & 837/2016.

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**CORAM : A.S.GADKARI, J.**

**DATE : 15<sup>th</sup> November 2019.**

**P.C.:**

**1]** By the present Appeal from Order, the appellants/original Defendant Nos.4 and 5 in S.C. Suit No.3414 of 2013 have impugned Order dated 7.11.2015 partly allowing the Notice of Motion No.3301 of 2013 filed by the respondent No.1, restraining the defendant Nos.1 to 5 from transferring and/or creating third party right in the suit premises.

**2]** Heard Mr. Dani, the learned Senior Counsel for the appellants, Mr. Sharma, the learned counsel for the respondent No.1 and Mr. Vasudeo, the learned counsel for the respondent No.4. Perused the record annexed to the Appeal from Order.

3] The record indicates that, the respondent No.1 has instituted S.C. Suit No.3414 of 2013 for specific performance of the contract as per the allotment letter No.V/105A/111, Deed of Conveyance dated 6.11.2006 and for other consequential reliefs.

It is the case of the respondent No.1 that, he has paid consideration of Rs.7,14,000/- to the respondent No.2 towards purchase of suit property i.e. Unit No.111 (Old Unit No.105A) out of total consideration of Rs.8,19,000/- and the respondent No.2 has executed a stamped receipt in that behalf. As the respondent Nos.2,3 and 4 failed to comply with their part of obligation despite accepting substantial consideration towards sale of suit property, the respondent No.1 filed the present suit. The respondent No.1 also took out a Notice of Motion No.3301 of 2013 for interim relief. The Trial Court by its impugned Order 7.11.2015 has partly allowed the said Notice of Motion.

4] Mr. Dani, the learned senior counsel for the appellants submitted that, there is no conclusive contract between the respondent Nos.1 and 2 which can be accepted in the eyes of law. That the appellants are the bonafide purchasers for valuable consideration without notice and are in the possession of the suit property. He submitted that, the respondent No.2 never disclosed the fact of entering into an agreement or accepting valuable consideration from the respondent No.1 to them. That because of the fault of respondent No.2, the appellants should not suffer. He therefore prayed that, the impugned Order may be set aside by allowing the present appeal.

5] Perusal of the record would indicate that, the respondent No.1 has paid a sum of Rs.7,14,000/- to the respondent No.2 and the Director of the respondent No.2

has executed a duly stamped receipt in that behalf against sale of Unit No.111(Old No.105A). The appellants will have to prove their case that, the said receipt is not genuine receipt by leading substantial evidence in that behalf at the time of trial. There is allotment letter bearing No.V/105A/111 on record which indicates that, the premises namely Unit No.111(Old No.105A) on first floor of the said building is reserved upon of receipt of amount of Rs.7,14,000/- from the respondent No.1.

6] As noted earlier, the respondent No.1 in fact has paid Rs.7,14,000/- towards consideration amount to the respondent and the respondent No.2 had issued a duly stamped receipt in that behalf. Thus prima facie it appears that, there is substance in the contention of the respondent No.1. The balance of convenience lies in favour of the respondent No.1 and therefore if the Order granting temporary injunction against the appellants is continued during the pendency of the suit, no irreparable loss would be caused to them.

7] In view thereof, I find no merits in the present Appeal and the same is accordingly dismissed.

In view of dismissal of the Appeal from Order, Civil Application does not survive and the same is accordingly disposed off.

**(A.S.GADKARI, J.)**