

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.214 OF 2019
WITH
CIVIL APPLICATION NO.253 OF 2019**

Mr. Sandeep Dashrath Sherkhane ... Appellant

Versus

Mrs. Paramjit Kaur Bansal

And others

... Respondents

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Mr. Mayur Khandeparkar a/w Mr. Siddhanth Chhabria i/b Ms. Priyanka Chhabria for the Appellant.

Mr. Ashish Raghuvanshi a/w Mr. Hari Om Mishra i/b Mr. Ram Ugra Singh for Respondent No.2.

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CORAM : S.C. GUPTE, J.

DATE : 6 SEPTEMBER 2019

P. C. :

. This Appeal from Order challenges an ad-interim order passed by the City Civil Court at Dindoshi on a notice of motion taken out by Respondent No.1 (original plaintiff).

2 The plaintiff's case is based on an agreement for sale in respect of the suit property executed on 20 July 2018. It was submitted that the plaintiff was originally a tenant in respect of the old premises at site and was allotted ground floor of the suit premises consisting of 350 sq.ft. in lieu of the old premises and an additional area of 530 sq.ft. was purchased by her on the first floor. It was submitted that,

accordingly, a total area of 880 sq.ft. was agreed to be given by Respondent No.2 (original defendant no.1). It was the plaintiff's case that defendant no.1 was seeking to create third party rights in respect of the suit premises in favour of defendant no.4 (present Appellant). The plaintiff, accordingly, sought specific performance of the agreement and claimed an interim injunction against creation of any third party right in respect of the suit property, either by defendant nos.1 to 3 or defendant no.4. The City Civil Court granted the ad-interim relief in favour of the plaintiff. That order is challenged in the present Appeal from Order by defendant no.4. It is the case of defendant no.4 that he has a sale deed in respect of the suit premises in his favour; and in pursuance of that sale deed, he was granted Flat No.101 on the first floor of the suit structure, i.e. area admeasuring 530 sq.ft. It is submitted that the purported agreement of 20 July 2018, on which reliance is placed by the plaintiff for claiming rights to the suit premises, is *prima facie* a got-up document.

3 Learned Counsel appearing for the Appellant draws my attention to the date of purchase of the stamp paper, which is subsequent to the date of the agreement as also notarization of the agreement and the date of the cheque, which is stated to have been paid under the agreement. The learned trial Judge was, however, of the view that these matters could be gone into at the stage of hearing of the notice of motion and for the moment, the plaintiff was entitled to ad-interim injunction on the basis of the agreement produced by her, namely, the agreement dated 20 July 2018.

4 There is no infirmity in the impugned order. At the ad-interim stage, all that the court is required to see is whether the case calls for a hearing of the interim application and pending such hearing whether the plaintiff needs protection. The assessment of *prima facie* case, irreparable damage and balance of convenience at the ad-interim stage is essentially from a tentative stand point. When the notice of motion is heard, the court applies its mind more fully to these aspects.

5 It is clarified that the observations of the court concerning completion of the building are merely tentative and made only for the purpose of deciding the ad-interim application and shall not be treated as a finding of the trial court.

6 The Appeal from Order has no merit and is dismissed with the clarification noted above.

7 In view of the dismissal of the appeal, the civil application does not survive and is disposed of.

(S.C. GUPTE, J.)