

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 2758 OF 2018
IN
FIRST APPEAL NO. 870 OF 2018**

M/s. Tricom Developers ..Applicant.
Versus
Suresh B. Patel & Ors. ..Respondents.

Mr. Drupad S. Patil, Advocate for Applicant.
Mr. Sham V. Walve, Advocate for Respondent Nos.2 & 3.
Mr. Rohit P. Sakhdeo, Adv. for Respondent No.6.
Mr. Jaiprakash Sawant, Advocate for Respondent No.5.

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATED : 18th DECEMBER, 2019.**

PC :

1. Heard the learned counsel for the parties.
2. For the sake of convenience, hereinafter nomenclature of the parties are referred to as stated in the plaint.
3. By this Civil Application, the plaintiff is seeking order of injunction restraining the respondents from creating any third party rights, title and interest in respect of the suit property i.e. Plot No.84, Sector No.20, situate at village Ulve, Tal. Panvel, Dist. Raigad. Learned counsel for the plaintiff submits that in the present proceeding, initially, the defendant No.1 had agreed to purchase the suit property

from defendant Nos.2 to 5 by an Agreement for Sale dated 28/07/2009 for a sum of Rs.1,32,00,000/-. He submits that, thereafter, the plaintiff entered into an agreement dated 25/03/2010 with the defendant No.1 to purchase the suit property for Rs.3 crores. He submits that, pursuant to said agreement, the plaintiff has paid sum of Rs.1,11,00,000/- to the defendants. He submits that these facts were considered by the trial court at the time of passing impugned Judgment and decree dated 25/04/2018, particularly in paragraph No.13.

4. The learned counsel for the plaintiff submits that, during the pendency of the suit, the plaintiff had preferred an application below Exh.05 for injunction restraining the defendants from creating any third party rights, title and interest in respect of the suit property. He submits that, the trial court has passed an order directing both the parties to maintain status-quo.

5. The learned counsel for the plaintiff submits that, the trial court has dismissed the plaintiff's suit only on the ground that the defendant Nos.2 to 5 were not party in the subsequent agreement dated 25/03/2010. In support of this contention, the learned Counsel for the plaintiff relied on the issues framed by the trial court. He submits that the trial court has held that there was an agreement between the plaintiff and defendant No.1 dated 25/03/2010 for sum of

Rs.3 crores in respect of the suit property. Hence, plaintiff has filed the present First appeal.

6. Learned Counsel for the plaintiff submits that the First Appeal is admitted on 08/08/2018. He further submits that this court by order dated 16/08/2018 granted ad-interim relief in favour of the plaintiff. He submits that, during the pendency of present First Appeal, this Hon'ble court be pleased to restrain the defendants from creating third party rights, title and interest in respect of the suit property. He submits that if this Civil Application is not allowed, irreparable loss would be caused to the plaintiff and nothing will survive in the First Appeal.

7. On the other hand, learned Counsel Mr. Jaiprakash Sawant, appearing on behalf of the defendant No.5 vehemently opposed the present civil application. He submits that, admittedly, in the present proceeding the plaintiff has purchased the suit property from the defendant No.1. They were not party to the agreement executed between the plaintiff and defendant No.1. Not only that, they have not received any consideration for the suit property. Not only that, the defendant No.1 has committed fraud on them. Therefore, there is no question of granting any injunction in favour of the plaintiff. He further submits that they want to develop this property, therefore, interim relief granted by this court to be vacated.

8. Learned counsel Mr. Sham Walve, appearing on behalf of the Respondent Nos.2 and 3 also vehemently opposed the present civil application. He relies on the Memorandum of Understanding (MOU) dated 25/03/2010 and Agreement for Sale dated 28/07/2009. He submits that bare reading of MOU, as well as, agreement for sale shows that no consideration was paid by the defendant No.1 to the defendant Nos.2 to 5. Not only that, they never agreed to sale the suit property to the defendant No.1. Therefore, there is no question of granting any interim relief in favour of the plaintiff in the present civil application. Therefore, civil application be dismissed with costs.

9. We have heard both the sides at length.

10. Admittedly, in the present proceeding, the plaintiff had filed a suit for specific performance of the agreement for sale. The original defendant No.1 had agreed to purchase the suit property from the defendant Nos.2 to 5 and thereafter plaintiff had agreed to purchase the same from the defendant No.1 by agreement dated 25/03/2010 for a sum of rupees Three Crores. The plaintiff has paid sum of Rs.1,11,00,000/- to the defendants and in support of that the plaintiff has relied on the statement which is at page No.103 of the Appeal memo. Apart from that, during the trial, the Trial court has recorded in the Judgment that, the plaintiff has paid sum of Rs.1,11,00,000/- to the defendants. Not only that, during the

pendency of suit, the trial court has granted status-quo order in favour of the plaintiff. It is to be noted that if the interim relief is not granted in favour of the plaintiff and defendants create third party right, title and interest in respect of the suit property then nothing will survive in the present First Appeal.

11. Considering this fact, we are of the opinion that the plaintiff has made out a case for allowing this Civil Application. Hence, the following order.

1. The Civil application is allowed in terms of prayer clause (a) which reads thus:

“a) Pending the hearing and final disposal of First Appeal, this Hon’ble Court be pleased to pass the appropriate Order of Temporary Injunction, thereby restraining the Respondents from creating any Third-party rights in respect of the Suit Property i.e. Plot No.84, Sector-20, situated at Village-Ulve, Tal:Panvel, Dist.: Raigad.”

2. The Civil application is disposed of accordingly.

3. No order as to cost.

4. Hearing of First Appeal No.870 of 2018 is expedited.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)