

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 39 OF 2017****WITH****CIVIL APPLICATION NO. 50 OF 2017****IN****APPEAL FROM ORDER NO. 39 OF 2017**

M/s. Patel Developers & Ors.

.....Appellants.

Vs.

Mr. Jayantibhai M. Vagadia & Ors.

.....Respondents.

Mr. P.S. Dani, Senior Advocate a/w Nishant Tripathi, Vaibhav Bandgar, Somnath Iyer and Muzammil Mulla for the Appellants.

Mr. P.D. Patil for the Respondent No.1.

Mr. Rajesh Datar for the Respondent No.2.

CORAM : A. S. GADKARI, J.

DATE : 27th NOVEMBER, 2019.

PC.:-

By the present Appeal under Order 43 of the Code of Civil Procedure, the Appellants-original Plaintiffs have impugned Order dated 19th October, 2016 passed below Exhibit-5 in Special Civil Suit No. 209 of 2016 by the learned Joint Civil Judge, Senior Division, Thane thereby rejecting the said Application for injunction filed by the Plaintiffs.

2 Heard Mr. Dani, learned Senior Counsel for the Appellants, Mr. Patil, learned counsel for the Respondent No.1 and Mr. Datar, learned counsel for the Respondent No.2. Perused the entire record, annexed to the

Appeal.

3 The record indicates that, the Appellants have filed the aforestated Special Civil Suit No. 209 of 2016 in the Court of Joint Civil Judge, Senior Division, Thane at Thane for declaration that, the Agreement to Assignment dated 16th March, 2011 executed by the Respondent No.1 in favour of the Appellants is valid, subsisting and enforceable and for declaration that, the transaction between the Respondent No.1 and Respondent No.2 as per tripartite agreement dated 7th May, 2013, is null and void or at least voidable at the instance of Appellants and for other consequential reliefs.

 The Appellants had also filed an Application below Exhibit-5 seeking temporary injunction against the Respondents from disturbing the quiet and peaceful possession of the Appellants in respect of the Suit property, more particularly mentioned in the body of the Complaint and Exhibit-5 Application and for obtaining development permission, approval of the plans *qua* the Suit property. As noted earlier, by the impugned Order, the Trial Court has rejected the said Application.

4 It is the case of the Appellants that, for acquiring Suit property, which belongs to Respondent No.3, the Appellants extended financial help to the Respondent No.1 from time to time. That, as per the mutual understanding between the parties i.e. between the Appellants and Respondent No. 1, an Agreement to Assignment dated 16th March, 2011 has

been executed between the parties *inter-se*. It *prima facie* appears that in furtherance of the said Agreement to Assignment, the Respondent No.1 executed a letter of possession dated 27th September, 2012 and put the Appellants in physical possession of the Suit property.

It further clearly indicates that, in the Written Statement filed by the Respondent No.1, certain admissions are given by him to the extent that, he has accepted financial assistance from the Appellants for acquiring the Suit property. It further appears that, the Respondent No.1 has also taken a stand that, the amounts advanced by the Appellants for purchase of the said Suit property were towards settling of earlier financial transactions *inter-se* between the said parties and that the Appellants were bound to advance the said amount to him, which in fact they did.

5 Mr. Datar, the learned counsel appearing for the Respondent No.2 submitted that, as per his instructions, the Respondent No.2 is in possession of the Suit property in furtherance of various Indentures executed between the Respondent No.1 and Respondent No.2. He further submitted that, the Respondent No.2 is a bonafide purchaser for valuable consideration without notice. It *prima facie* appears that, to substantiate the said contention, contemporaneous record has not been produced by the Respondent No.1.

May that, as it may. It is for the Respondent No.2 to prove his contention at the time of Trial by leading the substantive evidence in that

behalf.

6 As noted earlier, a strong *prima facie* case has been made out by the Appellants by producing necessary and relevant documents in that behalf. Balance of convenience strongly lies in favour of the Appellants. No irreparable loss, harm or injury will be caused to the Respondents, if the injunction in favour of the Appellants is granted by the Court.

A perusal of impugned Order would indicate that, the Trial Court has taken into consideration irrelevant material which is not germane for deciding the Application below Exhibit 5. Various observations made by the Trial Court in its impugned Order are contrary to the settled principles of law by the Hon'ble Supreme Court in that behalf. Reliance is placed on the decisions of the Supreme Court in the cases of Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (Dead) Through LRs. reported in (2012) 5 SCC 370 and Union Of India Vs. Ibrahim Uddin & Anr. reported in (2012) 8 SCC 148.

7 In view thereof, impugned Order dated 19th October, 2016 is hereby quashed and set aside.

Appeal is allowed in the aforesaid terms.

Ad-interim relief granted by Order dated 26th October, 2016 by this Court, shall remain in force till the conclusion of the Special Civil Suit No. 209 of 2016.

8 The learned Joint Civil Judge, Senior Division, Thane seized of Special Civil Suit No. 209 of 2016 is hereby requested to expedite the hearing of the said Suit and to make an endeavour to dispose of the same within a period of one year from today.

 In view of disposal of Appeal, Civil Application No. 50 of 2017 does not survive and is also disposed off.

(A.S. GADKARI, J.)