

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

**APPEAL FROM ORDER (STAMP) NO.33861 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.33862 OF 2018
IN
APPEAL FROM ORDER (STAMP) NO.33861 OF 2018**

M/s. Arya Vedant Promoters and
Builders and Ors.

...Appellants/Applicants

Versus

Balasaheb Venkatrao Gaikwad and
Ors.

...Respondents

.....

Mr. A.V. Anturkar, senior Advocate i/b. Mr. Tanaji Mhatugade for the
Appellants/Applicants.

Mr. Y.S. Jahagirdar, Senior Advocate i/b Mr. Vilas B. Tapkir for the
Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th MARCH, 2019.

P.C.:-

The Appellants have impugned the order dated 19/11/2018
restraining them from carrying out construction over the suit land and
creating third party interest in the suit land till the decision of the suit.

2. The Respondent No.1 is the Plaintiff whereas the
Respondent Nos.2 to 5 are the Defendant Nos.1 to 4 and the
Appellants herein are the Defendant Nos.5 to 7 in Civil Suit No. 41 of
2013 and shall be hereinafter referred to as the Plaintiff, Defendant

Nos.1 to 4 and Defendant Nos.5 to 7 respectively.

3. The dispute is in respect of the land admeasuring 60 R of Survey No.109, Hissa No.2, village Ravet, Pimpri Chinchwad. The said property shall be hereinafter referred to as the 'suit property'. The Plaintiff had entered into an agreement dated 18/10/2010 with the Defendant Nos.1 to 4 to purchase the suit property for total consideration of Rs.6,60,00,000/-. The Plaintiff alleged that the Defendant Nos.1 to 4 had avoided executing the sale deed despite having received part consideration. The Plaintiff therefore filed a suit for specific performance with an application for interim relief seeking to restrain Defendant Nos.1 to 4 from alienating or creating third party rights. By ad-interim order dated 1/3/2013 the Trial Court had directed the parties to maintain status-quo. The application for interim relief was subsequently dismissed on 5/8/2014 mainly on the ground that the Plaintiff had prima facie failed to show that there was a reasonable apprehension of alienation of the suit property.

4. The records reveal that the Defendant Nos.1 to 4 had already sold the suit property to the Defendant Nos.5 to 7 during the pendency of the application for interim relief, in contravention of the

ad-interim order. The Plaintiff noticed that the Defendant Nos.5 to 7 were carrying out construction in the suit property. Hence, he filed another application for interim injunction at Exhibit 98 seeking to restrain the Defendant Nos.5 to 7 from carrying out the construction and/or creating third party right in respect of the suit property.

5. The Defendant Nos.5 to 7 put in their appearance and raised a plea that they are bonafide purchasers and further stated that construction of a three storey building is almost at the stage of completion. The Defendant Nos.5 to 7 further claimed that they have already entered into agreements for sale with several purchasers. These Defendants claim that they have paid consideration to the Defendant Nos.1 to 4 and that they have incurred huge expenses in constructing the building.

6. The learned Trial Judge has held that the Defendant Nos.5 to 7 were aware of the pendency of the suit and hence the principle of lis pendence would be applicable. The learned Judge further held that the Defendant Nos.5 to 7 have entered into the agreement even after they were impleaded as party to the suit and during the pendency of the application for injunction. The learned Judge held that the

Plaintiff will suffer irreparable loss in the event the Defendants are allowed to go ahead with the construction and enter into transactions with third parties. The learned Judge therefore allowed the application and restrained the Defendant Nos.5 to 7 from carrying out construction on the suit property. Being aggrieved by the said order the Defendant Nos.5 to 7 have filed the present appeal.

7. Mr. A.V. Anturkar, the learned senior counsel for the Defendant Nos.5 to 7 contends that these Defendants were not aware of the pendency of the civil suit between the Plaintiff and the Defendant Nos.1 to 4. He submits that Defendant Nos.5 to 7 have paid considerable consideration to the sisters of the Defendant Nos.1 to 4 and having settled the dispute, they have purchased the suit property from the Defendant Nos.1 to 4 by a registered deed of sale dated 18/6/2014. He submits that the Plaintiffs were fully aware about the execution of the sale deed. He contends that the Defendant Nos.1 to 4 had represented to these Defendants that the suit property is not a subject matter of any litigation and that the Defendant Nos.5 to 7 are bonafide purchasers. He submits that as on the date of filing of the application, the construction had almost reached the stage of completion. He submits that the Defendant Nos.5 to 7 have already

entered into agreements for sale with several purchasers wherein these Defendants have already disclosed about pendency of suit. He also submits that since the Defendant Nos.5 to 7 were not aware of the pendency of the suit, there was no question of disclosing the said fact to the RERA Authority.

8. Shri Y.S. Jahagirdar, the learned senior counsel for the Plaintiff submits that the Defendant Nos.1 to 4 had sold the said property in breach of status-quo order granted by the Trial Court and that during pendency of the application at Exhibit-5. He submits that the Plaintiff learnt about the said transaction only in the year 2018 when the Defendant Nos.5 to 7 had commenced construction. The Plaintiff therefore, filed an application at Exhibit-98. He submits that the photographs produced alongwith the said application clearly indicate that the construction was at initial stage as on the date of filing of the application. He submits that Defendant Nos.5 to 7 have entered into agreements and carried out further construction during the pendency of the said application at Exhibit-98. He submits that the Defendant Nos.1 to 4 were impleaded as party to the suit on 23/3/2018 and that they had put in their appearance on 26/10/2018. He submits that even after putting in their appearance and after having

knowledge about the pendency of the suit, the Defendant Nos.5 to 7 had made a false statement before RERA Authorities. Mr. Jahagirdar, the learned counsel for the Plaintiff submits that conduct of the Defendant Nos.5 to 7 do not justify grant of discretionary relief in their favour.

9. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

10. The records prima facie indicate that the Plaintiff had entered into an agreement with Defendant Nos.1 to 4 on 18/12/2010 for purchase of the suit property. Failure to execute the sale deed resulted in filing of the suit for specific performance. Apprehending that the Defendant Nos.1 to 4 would alienate the property during pendency of the suit, the Plaintiff also filed an application at Exhibit-5 for interim relief. The records indicate that by order dated 1/3/2013 the Trial Court had directed the parties to maintain status-quo. The Defendant Nos.1 to 4 had sold the property to Defendant Nos.5 to 7 in breach of status-quo order. The Defendant had already executed the sale deed when the application at Exhibit-98 was rejected on the ground that there was no reasonable apprehension of transfer or

alienation of the suit property. The conduct of the Defendant Nos.1 to 4 is prima facie contemptuous.

11. The Plaintiff had specifically averred that he had learnt about this transaction only in the year 2018 when he had seen some construction activity in the suit property. Specific averments have been made in the application that the construction was at initial stage. The plaintiff had also placed on record photographs alongwith the application showing the stage of the construction. A perusal of the said photo prima facie indicates that the construction had not commenced as on the date of filing of the application. Though the Defendants had stated in their reply that they had commenced the construction of three storey building and that the construction had almost reached a completion stage, there is no prima facie material to substantiate the said statement. On the contrary, as stated earlier, photographs produced by the Plaintiff alongwith the application at Exhibit-98 indicate that the construction had not commenced and it was at the initial stage of digging and piling. The records thus indicate that the construction, if any, was completed during the pendency of the application. Agreement for sale, entered into by the Defendant Nos.5 to 7 were executed on 20/8/2018 and 5/9/2018 i.e. after Defendant

Nos. 5 to 7 were impleaded as parties to the suit and after they had put in appearance in the said suit. The Defendant Nos.5 to 7 having chosen to complete the construction and having entered into transaction during pendency of the application cannot seek equity.

12. Furthermore, the records also prima facie indicate that despite being aware of the pendency of the suit, the Defendants had made a false statement before the RERA Authorities that there was no litigation in the suit property. Conduct of the Defendant Nos.5 to 7 would therefore not justify grant of equitable relief.

13. Having gone through the reasons given in the impugned order, in my considered view the impugned order is neither perverse nor illegal and does not justify interference. Hence, the appeal is dismissed.

14. In view of the dismissal of the appeal from order, the civil application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)