

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH : NAGPUR.**

**CIVIL APPLICATION (F) NOS. 1032/2020 AND 1417/2020**  
**IN FIRST APPEAL NO.352/2020**

Sau.Manish Madanmohan Agrawal and others.

Vs.

Satyanarayan Dulichandji Agrawal and others.

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

Court's or Judge's Order

Shri A.M.Kukday, Advocate for appellants.

Shri A.S.Dhore, Advocate for respondent nos. 1 to 5

Shri R.K.Sanghi, Advocate with Shri V.P.Marpakwar, Advocate for respondent  
no.6

**CORAM :- A.S.CHANDURKAR AND N.B.SURYAWANSHI, JJ.**

**DATED :- NOVEMBER 24, 2020.**

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. The present appeal has been filed by the original defendant nos. 2 to 4 who are aggrieved by the decree passed by the trial Court on 17.10.2019 in the suit for partition and separate possession that was filed by the original plaintiffs. The suit property pertains to area within field Survey No.121/1. According to the plaintiffs, by a sale deed dated 27.07.2016 one-third undivided share of the predecessor of the defendant nos. 2 to 4 - Madanmohan came to be sold to the defendant no.1. According to the plaintiffs, the vendor of the defendant no.1 had only one-fifteenth (1/15th) undivided share in the property. Hence the aforesaid suit for partition along with separate possession and for declaration to that effect was filed. During the

pendency of the suit, the plaintiffs and the defendant no.1 entered into a compromise by virtue of which it was agreed between them that each plaintiff and the defendant no.1 would be put in separate possession of independent plots of the suit property. The suit was withdrawn as against defendant nos. 2 to 4. The trial Court accepted the compromise as agreed between the plaintiffs and the defendant no.1 and decreed the suit accordingly. The said judgment is under challenge by the defendant nos. 2 to 4 principally on the ground that they were not parties to the compromise petition on the basis of which the suit was disposed of. While issuing the notice this Court had passed an ad-interim order staying the effect of the judgment of the trial Court.

3. In the application for vacating the ad-interim order the original defendant no.1 has submitted that pursuant to the sale deed dated 27.07.2016 he has purchased the suit property. What was sold to him was one-third undivided share of the predecessor of the defendant nos. 2 to 4 and the defendant nos. 2 to 4 were consenting parties to the sale deed. This sale deed has not been challenged by the defendant nos. 2 to 4. Moreover, the rights of the defendant nos. 2 to 4 were not affected by virtue of the compromise and an arrangement was made only with regard to giving exclusive separate possession to the plaintiffs and the defendant no.1 of the suit property. The defendant nos. 2 to 4 are not affected by the compromise. By virtue of the ad-interim order the defendant no.1 is not in a position to deal with the property. Hence, it is prayed that the ad-interim relief be vacated.

In reply it is submitted by the defendant nos. 2 to 4 that as written statement on behalf of the said defendants is not on record of the trial Court, it would not be possible to take any stand on the merits of the dispute. The compromise having been

arrived at behind the back of the defendant nos. 2 to 4, it was illegal and not binding on them. The ad-interim order therefore ought to be confirmed.

4. We have heard the learned counsel for the parties. *Prima facie*, it is seen that on 27.07.2016 the predecessor of the defendant nos. 2 to 4 sold one third undivided share from Survey No.121/1 to the defendant no.1. To the said sale-deed, the defendant nos. 2 to 4 are consenting parties. It is informed that till date the defendant nos. 2 to 4 have not challenged the aforesaid sale deed. Though it is a fact that the defendant nos. 2 to 4 are not parties to the compromise petition, a perusal of the terms of compromise indicates that it is merely an arrangement between the plaintiffs and the defendant no.1 as to the manner in which they would enjoy their respective shares in the suit property. It has not shown that by virtue of the said compromise deed, the possession of any land is being taken from the defendant nos. 2 to 4 or that their rights have been compromised in any manner. No legal prejudice has been pointed out. It goes without saying that the rights of the parties would be decided in the appeal including the binding effect of the compromise on the defendant nos. 2 to 4.

5. In absence of any *prima facie* case being made out with regard to a right in Survey No. 121/1 coupled with the fact that the defendant nos. 2 to 4 were consenting parties to the sale deed dated 27.07.2016, we do not find any reason to confirm the ad-interim relief granted earlier. Accordingly, ad-interim relief granted on 05.10.2020 stands vacated. Needless to state that any transactions entered into by the plaintiffs and the defendant no.1 pertaining to the suit property would be subject to final adjudication of the appeal.

6. By clarifying that these observations are *prima facie* in nature and only for the purpose of considering the prayer for interim relief, both these applications are disposed of.

**JUDGE**

**JUDGE**

*Andurkar.*