

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 173 OF 2021
WITH
INTERIM APPLICATION NO. 1778 OF 2021**

Sandesh Machindranath Tambe

... Appellant

V/s.

Gangaram Kisan Kadlag & Ors.

... Respondents

Mr.R.M. Pethe for Appellant.

Mr.Nikhilesh Pote for Respondent Nos.1 to 8.

Dr.Uday Warunjikar for Respondent Nos.16 to 18.

CORAM : A.S. GADKARI, J.

DATE : 20th October 2021.

PC. :

1. By the present Appeal under Order 43 Rule 1 of the Civil Procedure Code, the Appellant-Original Plaintiff has impugned Order dated 4th May 2021 passed below Exh.5 in Special Civil Suit No. 337 of 2020, thereby rejecting the said application filed by the Appellant against Respondent Nos.1 to 8 and 16 to 18 for interim injunction.

2. Heard Mr.Pethe, learned Advocate for the Appellant, Mr.Pote, learned Advocate for Respondent Nos.1 to 8 and Dr.Warunjikar, learned Advocate for the Respondent Nos.16 to 18. Perused record.

3. Appellant-Original Plaintiff, has filed Special Civil Suit No. 337 of 2020 for specific performance of alleged Agreement dated 30th September 2013 executed between the Appellant and Respondent Nos.1 to 8; for cancellation of Sale-Deeds executed between Respondent Nos.1 to 8 on one hand and Respondent Nos.16 to 18 on other hand and for other consequential reliefs. Appellants have also prayed for an alternative prayer for monetary compensation, if the Trial Court is not inclined to grant substantive prayers of the Appellant. As noted earlier, by the impugned Order the Trial Court has rejected application filed by the Appellant for interim relief below Exh.5.

4. Mr.Pethe, learned counsel for Appellant submitted that, the Appellant has paid a sum of Rs.11,00,000/- to Respondent Nos.1 to 8 and has also incurred substantial expenses for getting released the suit property from Government, as the Respondent Nos.1 to 8, who were project affected persons, were not being allotted alternate land by the Government. He submitted that, after allotment of the said land in favour of the Respondent Nos.1 to 8, they swiftly sold and transferred it in favour of Respondent Nos.16 to 18 by executing Sale-Deeds, thereby leaving Appellant high and dry. He submitted that, at the end of the day the Appellant is left with nothing in his hand and therefore it is necessary to prevent Respondent Nos.16 to 18 from creating further right, title and/or interest in the suit property.

5. The record *prima-facie* indicates that, the alleged Agreement dated 30th September 2013 is infact a simplicitor 'earnest receipt' of payment made by the Appellant to the Respondent Nos.1 to 8. The Appellant is seeking specific performance of this document. The said document is an unregistered document. It further appears that, the Appellant being a moneyed person, with a view to take undue advantage of the financial difficulties of the Respondent Nos.1 to 8 entered into the said Agreement, which infact is a contingent contract or future contract for the land, which was supposed to be allotted in favour of the Respondent Nos.1 to 8 by the Government.

6. It is to be noted here that, in para No.4 of the said Agreement, it is categorically mentioned that, the period for completion of the said transaction was one year from the date of its execution. It appears that, the Appellant did not comply with his part of obligation within the said stipulated period and after the land was allotted in favour of the Respondent Nos.1 to 8 by the Government, they transferred it in favour of the Respondent Nos.16 to 18. It further appears that, time was essence of the contract which the Appellant has failed to comply with, within stipulated period of one year. The Respondent Nos.1 to 8 therefore subsequently executed Sale-Deeds in favour of Respondent Nos.16 to 18. The Respondent Nos.16 to 18 are bonafide purchasers of suit property for valuable consideration.

7. It is to be further noted here that, the Appellant has also claimed monetary compensation, if the Trial Court is not inclined to grant him substantive reliefs. It is thus clear that, the claim of the Appellant can be compensated in terms of money and no irreparable loss would be caused to him if interim relief is not granted in his favour. The Appellant has failed to establish prima-facie case. Balance of convenience also does not lie in favour of the Appellant.

8. Perusal of impugned Order dated 4th May 2021 indicates that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order. In view thereof, I find no merits in the Appeal.

Appeal is accordingly dismissed.

9. In view of dismissal of Appeal, Interim Application No.1778 of 2021 does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]