

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4080 OF 2021

1. Dream Developers,
(Regd. Partnership Firm)
Plot No.38, Rajendra Nagar,
Nalva Road, Nandurbar
Tq. & Dist. Nandurbar.
Being the developers,
Through its Partners.
2. Devidas Khandu Nerkar,
Age: 56 years, Occu: Business,
R/o: Plot No.1, Roopam Nagar,
Nalva Road, Nandurbar
Tq. & Dist. Nandurbar.
3. Suryakant Bhimdas Agale,
Age: 47 years, Occu: Business,
R/o: Plot No.38, Rajendra Nagar,
Nalva Road, Nandurbar
Tq. & Dist. Nandurbar.

... Petitioners
(Orig. Plaintiffs)

Versus

1. Dharmistha Vinodkumar Jain,
Age: 47 Years, Occu: Farmer & Business,
R/o: Vaibhav Nagar, Nalva Road,
Nandurbar Tq. & Dist. Nandurbar.
2. Narendra Dhingadmal Burud,
Age: 45 years, Occu: Business,
R/o: Parshwanath Park, Jain
Dadawadi, Talod Road,
Nandurbar Tq. & Dist. Nandurbar

... Respondents
(Orig. Defendants)

...
Advocate for Petitioners : Mr. A. S. Abhyankar h/f Mr. S. V. Natu
Advocate for Respondents No. 1 & 2 : Mr. S. P. Brahme
...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 29th JUNE, 2022
PRONOUNCED ON : 22nd JULY, 2022**

ORDER :

1. This petition filed under Article 227 of the Constitution of India is directed against the order dated 18/01/2021 passed by the learned Ad-hoc District Judge-1, Nandurbar in Misc. Civil Appeal No.14/2020, thereby allowing the appeal filed by the respondents and setting aside the order of temporary injunction passed by the trial Court.

2. The petitioners/original plaintiffs filed Special Civil Suit No.24/2018 against the defendants/respondents seeking relief of specific performance of contract dated 07/08/2017 for execution of re-conveyance deed and recovery of possession of land Survey No.37/3/B, to the extent of 550 Sq. Mtrs out of total 1650 Sq.Mtrs., situated at Nandurbar. It is contended by the petitioners that they were owner and possessor of the suit property. They were in need of money and therefore, they approached respondent No.1 and requested him to lend amount of Rs.20 lakhs. The respondent No.1 agreed to lend the said amount on condition that petitioners/plaintiffs would execute nominal sale deed of the suit property as a security to the said loan, in favour of respondent No.1. The said condition was accepted by the plaintiffs. The respondent No.1 at the same time agreed to execute re-conveyance agreement in respect of the suit property in favour of the plaintiffs. On 07/08/2017, respondent No.1 executed re-conveyance

agreement in favour of the plaintiffs and the plaintiffs executed nominal sale deed of the suit property on 08/08/2017 and respondent No.1 advanced Rs.20 lakhs to the petitioners/plaintiffs. As per the agreed terms the plaintiffs were ready to repay loan amount of Rs.20 lakhs with interest @ 2% per month to respondent No.1. However, instead of executing re-conveyance deed in favour of the petitioners, respondent No.1 without petitioners consent transferred the suit land in the name of respondent No.2 by executing sale deed for consideration of Rs.17 lakhs. The petitioners/plaintiffs were, therefore, constrained to file the suit.

3. The plaintiffs also filed application Exhibit-5 seeking injunction against the defendants. The defendants opposed the suit as well as the interim application by filing written statement at Exhibit-14, thereby denying the transaction between the petitioners/plaintiffs and respondent No.1/defendant No.1 as a money lending transaction. They contended that since the plaintiffs wanted to purchase another property, they sold the suit property to defendant No.1 for consideration of Rs.20 lakhs by executing a sale deed. The averment in respect of re-conveyance deed executed on 07/08/2017 is specifically denied. The defendants have come out with a specific case that plaintiffs in collusion with witnesses prepared a false and bogus deed of re-conveyance dated 07/08/2017 on stamp paper of Rs.100/-. Further contention is that

defendant No.2 has purchased the suit property from defendant No.1 and as such he has become absolute owner, therefore, they denied that the plaintiffs have right to seek specific performance in respect of the suit property.

4. The trial Court after hearing the parties partly allowed the application Exhibit-5 and restrained defendants from creating third party interest or rights in the suit property till the final disposal of the suit.

5. The defendants being aggrieved by the interim injunction order filed Misc. Civil Appeal No.14/2020, which is allowed by the District Court, thereby setting aside the temporary injunction order passed by the trial Court. The cross objection Exhibit-14 filed by original plaintiffs in the appeal is rejected. The petitioners/plaintiffs are aggrieved by this order.

6. Heard Mr. A. S. Abhyankar, learned advocate holding for Mr. S. V. Natu, learned advocate for petitioners and Mr. S. P. Brahme, learned advocate for respondents.

7. The learned advocate for petitioners assailed the impugned order on the ground that the appellate Court while passing the impugned order has failed to frame the points for determination. The appellate Court has assessed the evidence on record as if it was deciding the appeal on merits. The trial Court

was justified in passing the order of temporary injunction by giving cogent reasons. The appellate Court has erred in interfering well reasoned order passed by the trial Court. He, therefore, submits that the impugned order is liable to be quashed and set aside. In support of his submission, he relied on ***Chennadi Jalapathi Reddy Vs. Baddam Pratap Reddy (Dead) Thr. Lrs. & Anr., 2019 Supp.(2) SAR(Civ) 581.***

8. On the other hand, the learned advocate for respondents supported the impugned order. He submits that the sale deed executed by the plaintiffs in favour of defendant No.1 is dated 08/08/2017 and the defendant No.1 has executed sale deed in favour of defendant No.2 on 07/12/2017. The plaintiffs have filed suit belatedly after one year and 10 months after the sale deed of defendants. He further submits that plaintiffs have failed to prove *prima facie* case, balance of convenience and irreparable loss. Hence, the appellate Court was right in setting aside the order passed by the trial Court.

9. Heard the learned advocate for petitioners and the learned advocate for respondents at length.

10. On going through the documents placed on record, it appears that the trial Court, in the facts of the present case, was justified in partly allowing the application Exhibit-5 and restraining

the defendants/respondents from creating any kind of third party interest or rights in the suit property, till the final decision of the suit. Admittedly, the suit is filed for specific performance in respect of the suit property. It is the contention of petitioners that by filing suit the petitioners have sought execution of re-conveyance agreement dated 07/08/2017 and by accepting the amount the suit property be re-conveyed to the petitioners/plaintiffs. Final hearing of the suit will take time. The parties will have to lead evidence to prove their respective case. Thereafter, the trial Court will decide whether re-conveyance agreement dated 07/08/2017 is false document or not. Though that agreement is a registered document, still the trial Court will have to record findings on the issue whether that document is false and bogus and whether it is executed by the respective parties or not.

11. The defendants while opposing the interim injunction application have placed reliance on the handwriting expert's report. The trial Court has observed that the same is not a conclusive proof. Unless the expert steps into the witness box and is cross examined by the other party, his report cannot be relied upon. The trial Court has further recorded that defendant No.1 has executed sale deed in favour of defendant No.2 and he is in possession of the suit property. Therefore, to avoid further complications it would be appropriate to grant temporary injunction restraining the

defendants from creating any third party interest in the suit property. The trial Court has rightly rejected the injunction to the defendants to carry out construction on the suit property.

12. In the facts of the present case and on the basis of the record available, the trial Court has rightly passed the temporary injunction order. If third party interest is created during the pendency of the suit, the same would create further complications. No prejudice is likely to be caused to the defendants by the order passed by the trial Court.

13. The appellate Court has erroneously appreciated the evidence on record as if it was deciding the appeal on merits and has erred in reversing the order passed by the trial Court.

14. The trial Court, in the facts of the present case, has properly exercised discretion vested in it and has rightly come to the conclusion that if temporary injunction is not granted it may lead to further complications in the matter. The trial Court has judiciously exercised discretion in restraining the defendants from creating any third party interest.

15. In *Ambalal Sarabhai Enterprise Ltd. Vs. KS Infraspac LLP Limited and Another*, (2020) 5 SCC 410, relied upon by the learned advocate for respondents, the Hon'ble Supreme Court has referred paragraph No.5 of *Dalpat Kumar Vs. Prahlad Singh*, (1992)

1 SCC 719, which reads thus :

"5..... Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

16. In the light of the above ratio and on applying it to the facts of the present case, it is clear that there would be further complications in the suit of the petitioners if third party interest is created by the defendants in the suit property. The trial Court has rightly exercised discretion in the present case by arriving at a conclusion that the petitioners have made out *prima facie* case,

balance of convenience is in their favour and irreparable loss will be caused if injunction is not granted in their favour. In that view of the matter, the trial Court is justified in granting injunction in favour of the petitioners.

17. The appellate Court, on the other hand, has erroneously appreciated the evidence on record as if it was deciding the appeal on merits and has exceeded its jurisdiction in interfering in the discretionary order passed by the trial Court.

18. For the aforesaid reasons, writ petition is allowed in terms of prayer clause 'B'. The impugned order dated 18/01/2021 passed by the learned Ad-hoc District Judge-1, Nandurbar in Misc. Civil Appeal No.14/2020, is hereby quashed and set aside. Application Exhibit-5 in Special Civil Suit No.24/2018 is allowed. No Costs.

(NITIN B. SURYAWANSHI, J.)