

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.348 OF 2022
WITH
INTERIM APPLICATION NO. 2430 OF 2022
IN
APPEAL FROM ORDER NO. 348 OF 2022

Arun Sampatrao Patil .. Appellant
Versus
Pandurang Kondiba Bhumkar .. Respondent
...

Mr.Vishal Kanade with Jhanvee Joshi and Vaibhav R. Gargade i/b
Mohan B. Jadhav for the appellant.
Mr.G.S. Godbole for respondent no.10.

CORAM: BHARATI DANGRE, J.
DATED : 20th APRIL, 2022

P.C:-

1 The present Appeal is filed, being aggrieved by rejection of Exhibit-5 at the hands of 3rd Civil Judge, Sr. Division Pune, in Special Civil Suit No.1086/2018 instituted by the plaintiff (appellant herein) for specific performance, declaration and compensation against the defendant nos.1 and 3, based upon a development agreement dated 19/8/2004.

2 Heard Mr.Vishal Kanade for the appellant and Mr.Godbole for the respondent no.10.

3 On perusal of the compilation of documents placed before me, it can be seen that the plaintiff filed a Suit for specific performance, seeking performance of the agreement dtd. 19/8/2004, at the hands of the defendant nos.1 to 3 by executing the sale deed in his favour, and for putting him in possession of the suit property. The plaintiff pleaded that he has already paid the consideration of Rs.12,50,000/- out of the total consideration of Rs.1,80,62,000/- as agreed in the agreement. Pertinent to note that after the said agreement, the defendant nos.1 and 3 sold the suit property to defendant no.10 vide registered sale deed dated 1/9/2010 for a consideration of Rs.12,75,00,000/-. The plaintiff sought cancellation of the said sale deed, as void ab initio and claimed execution of sale deed in his favour.

4 While considering the application for grant of injunction filed vide Exhibit-5, the learned trial Judge determined the three relevant to be accounted for, before granting of application for injunction.

 Considering the case of the plaintiff and defendant, as placed before him, the sequence of events has been a material aspect. By recording that the agreement to sale dated 1/9/2010 was well within the knowledge of the plaintiff, but despite their Suit came to be filed in the year 2018, is one factor which weighted against the plaintiff. The subsequent development brought on record by defendant no.1, who had filed their affidavit in reply, specifically invites the attention of the Court to the steps

taken by them, pursuant to the purchase of the land from defendant nos.1 and 3 and they pleaded that they had incurred expenses of about Rs.12,75,00,000/-. On the suit property for pre-development activities and construction of the building had already commenced. This factor persuaded the trial Court to hold prima facie case, to be against the plaintiff.

On the similar count, since the defendant nos.1 and 3 had obtained necessary permission before execution of sale in favour of defendant no.10 from all the necessary authorities and followed the due process and since have started the development on the suit property, the factor of irreparable loss was also weighed in favour of defendant no.10.

I do not find any legal infirmity in the said order. By upholding the same, the Appeal from Order is dismissed.

In view of the dismissal of Appeal, Civil Application do not survive and is disposed off.

(SMT. BHARATI DANGRE, J.)