

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

**APPEAL FROM ORDER NO. 464 OF 2022
WITH
INTERIM APPLICATION NO. 3025 OF 2022
IN
APPEAL FROM ORDER NO. 464 OF 2022**

Mr. Balasaheb Dattatray Gawari and anr. Appellants
v/s.

Mr. Vasant Khandu Kate and ors. Respondents

Mr. P.J. Thorat i/b. Ms. Aditi Naikare for the Appellants.
Mr. Nachiket Khaladkar for Respondent Nos.1 and 2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th JULY, 2022.

P. C. :-

. The Appellants assail order dated 01/01/2022 whereby the learned Joint Civil Judge, Senior Division, Khed-Rajgurunagar has allowed the Application at Exhibit-5 and thereby restrained the Defendants from creating third party rights in respect of the suit property.

2. Respondent Nos.1 and 2 (hereinafter referred to as 'the plaintiffs') have filed a suit for specific performance of agreement dated 11/03/2013. The case of the plaintiffs is that the predecessor of Appellant No.1 and Appellant Nos.2 and 3 (hereinafter referred to as

‘the Defendants’) had agreed to sell property under CTS No.214 situated at Village-Nigoje, Taluka Khed for sale consideration of Rs.6,31,00,000/-. The plaintiffs paid an earnest amount of Rs.40,00,000/-. The balance amount was to be paid within the time specified in the agreement. The owners had agreed to execute the sale deed after disposal of the partition suit.

3. In the year 2019, the plaintiffs learnt that Respondent Nos.7 and 8 and 11 to 13 had executed a registered sale agreement in favour of Respondent No.15 for sale of part of the property. The plaintiffs therefore filed a suit for specific performance with notice of motion to restrain the Appellants and Respondents/Defendants from creating third party rights and interfering with their possession.

4. The impugned order reveals that the Appellants/Defendants had not filed written statement or reply to the application at Exhibit-5. It is stated that the Appellants were not heard in the matter and by the impugned order dated 01/01/2022, learned Judge partly allowed the Application at Exhibit 5 and restrained the Appellants/Defendants from creating third party rights in respect of the suit property. Being aggrieved by this order, the Appellants have preferred this Appeal.

5. In the course of the hearing, learned counsel for the Appellants submitted that during the pendency of the suit, portion of the land 1 Hectare 21 R has been sold in favour of Sanjay and Satish. Learned counsel for the plaintiffs also submits that during the pendency of the suit, sale deed executed in favour of defendant no.15 has been cancelled.

6. In view of these subsequent events, learned counsel for the Defendants as well as the Plaintiffs concede that the matter should be remanded to the Trial Court with opportunity to them to bring on record the subsequent events and to decide the matter afresh after hearing both the parties.

7. Under the circumstances, with consent, the Appeal is allowed. The impugned order to the extent of restraining the Defendants from creating third party rights, is set-aside. The matter is remitted to the Trial Court with liberty to the parties to bring on record subsequent events. The Trial Court is directed to give an opportunity to the Appellants/Defendants to file the reply and to decide the interim application afresh after hearing both the parties.

8. The Appeal stands disposed of in above terms. Status quo as on the date of the impugned order to continue till the disposal of the Application at Exhibit-5.

9. Pending Applications, if any, stand disposed of in view of disposal of the Appeal.

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(SMT. ANUJA PRABHUDESSAI, J.)