

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.458 OF 2022
WITH
INTERIM APPLICATION NO.2939 OF 2022

Suresh Algooram Sahu

... Appellant

Vs.

Mr.Kirti Jagarajji Kanther & Ors.

... Respondents

NILAM
SANTOSH
KAMBLE

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Date: 2022.07.26
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Mr.Abhishek L. Tripathi for the Appellant.

None for the Respondents.

CORAM : C.V. BHADANG, J.
DATE : 26 JULY 2022

P.C.

1. The challenge in this Appeal is to the order dated 19 March 2022 passed by the City Civil Court at Dindoshi, Mumbai in Draft Notice of Motion in S.C. Suit No.623 of 2022. By the impugned order the learned City Civil Court has refused to grant ad-interim relief.

2. I have heard the learned counsel for the Appellant. None appears for the Respondents, though served.

3. That the Appellant is challenging a Deed of Conveyance dated 13 December 2006 on the ground that it is

executed on account of fraud and misrepresentation and also inadequate consideration.

4. A perusal of the Notice of Motion shows that the Appellant had *inter alia* sought an order restraining the Respondents-Defendants from acting upon or granting and/or transfer the rights arising out of the alleged Deed of Conveyance dated 13 December 2006 in favour of the third parties, individual.

5. The learned counsel for the Appellant submitted that for the present the Appellant is only restricting to prayer Clause (a) in the Notice of Motion which reads thus :-

“(a) Pending the hearing and final disposal of the suit this Hon’ble Court by its temporary order and injunction be pleased to restrain the defendant Nos.1 and 2 their servants agents, representatives and/or all the persons claiming through, under, upon from them from implementing, putting into execution, into operation and/or acting upon and/or granting and/or transferring benefits, rights and/or such other like benefits and rights pursuant to the alleged Deed of Conveyance dated 13 December 2006 to any third party/ies, individuals, builders, developers and/or any such other persons.

6. During the course of the arguments the prayer was further limited seeking injunction restraining the Respondents-Defendant Nos.1 and 2 from transferring or creating third party

interest in a 2BHK flat which the Respondents have assured to give the Appellant under the Deed of Conveyance.

7. The learned counsel has tendered certain photographs of the present status of the construction which shows that the building is yet to be completed. It is not necessary at this stage to dwell on the merits of the Notice of Motion as the same is still pending before the City Civil Court.

8. The learned counsel for the Appellant submits that he will carry out appropriate amendment to the Notice of Motion specifying the reliefs sought in respect of the 2BHK flat.

9. In the circumstances, no case for interference is made out in the impugned order. The Appeal is accordingly disposed of.

10. Needless to mention that it will be open to the Appellant to carry out any amendment, if so advised, after which the Notice of Motion can be heard and decided by the City Civil Court on its own merits and in accordance with law. The City Civil Court shall proceed to hear and decide the Notice of Motion as expeditiously as possible.

11. It is made clear that this Court has not examined the rival contention of the parties on merits.

12. Pending Civil Application, if any, also stands disposed of.

C.V. BHADANG, J.