

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.677 OF 2022
WITH
INTERIM APPLICATION NO.10140 OF 2022
IN
APPEAL FROM ORDER NO.677 OF 2022

Pinninti Sreeram Sathya Reddy
Alias P.S. Sathya Reddy & Ors. ...Appellants

Vs.

Mr.Sunil Eknath Talwalkar & Ors. ...Respondents

NILAM
SANTOSH
KAMBLE

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NILAM SANTOSH
KAMBLE
Date: 2022.08.25
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Mr.Hemen S. Thakkar for the Appellants.
Mr.S.S. Patwardhan for Respondent No.1.
Mr.S.R. Nargolkar a/w Mr.Arjun Kadam for Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 24 AUGUST 2022

P.C.

. Heard finally by consent of parties.

2. The challenge in this Appeal is to the order dated 30 April 2022 passed by the learned City Civil Court, Mumbai in Notice of Motion No.1270 of 2021 in LC Suit No.1121 of 2021. By the impugned order the Notice of Motion taken out by the Appellants-Plaintiffs has been dismissed.

3. The case made out by the Appellants in the plaint is that their predecessor Late Sreeram Sathya Reddy had entered into a Development Agreement with the Respondent No.1 (Defendant No.1) on 4 July 2014 in respect of the suit property in which an amount of Rs.38 Lakhs has been paid to the Respondent No.1. The receipt of the said amount appears to be not disputed by the Respondent No.1. Shri.Sreeram Reddy expired on 28 March 2015. Thereafter the Appellants have filed the aforesaid suit, simplicitor for an injunction restraining the Respondent Nos.1 and 2 or anybody on their behalf from redeveloping the suit property either by themselves or through a developer or a contractor without written consent of the Appellants. The Appellants also sought an injunction against Respondent No.3-Corporation from granting sanction of the proposal or plans for such redevelopment.

4. The Notice of Motion was resisted on behalf of the Respondents, *inter alia* on the ground that the suit as framed and filed is not maintainable, as the suit is essentially in respect of a commercial cause which should be filed before the Commercial Court. It was submitted that the Appellants have not sought specific performance of the Development Agreement with the Respondent No.1. It is contended that the suit property is belonging to the Respondent Nos.1 and 2 who are real brothers and there is no partition and the respective shares of Respondent

Nos.1 and 2 have not been separated by metes and bounds. The Respondent No.2 has also contended that there is no privitay of contract between the Appellant and the Respondent No.2 and there is no Development Agreement entered into between them.

5. The learned City Civil Court after taking note of the fact that the exact portion which was agreed to be given for redevelopment is not set out in the agreement (In view of the fact that there is no partition) has refused to grant the injunction.

6. I have heard the learned counsel for the parties. Perused record.

7. The learned counsel for the Appellant submitted that the Respondent No.1 has admittedly accepted an amount of Rs.38 lakhs and merely because the Appellants can recover the said amount with interest is not sufficient to refuse injunction. It is submitted that there is valid agreement entered into between the Appellant and Respondent No.1 and therefore the learned Trial Court ought to have granted injunction as prayed. Except these there are no other contentions raised.

8. The learned counsel for Respondent Nos.1 and 2 have submitted that the suit as framed and filed is not maintainable. It is submitted that in any event, there is no

contract between the Appellant and Respondent No.2 and therefore the injunction as sought is not competent.

9. I have considered the submissions made. It is undisputed that the agreement of development was entered into between Late Sreeram Reddy and Respondent No.1. The Respondent No.2 is admittedly not a party to the said agreement. It is also not the case made out that the shares of the Respondent Nos.1 and 2 have been separated. A perusal of the agreement does not show, as rightly noticed by the Trial Court, that a specified share does not form a part of the said Development Agreement. Insofar as the admission by the Respondent No.1 is concerned about the acceptance of Rs.38 Lakhs, the Trial Court has found that the Appellants are liberty to recover the same. In any case that being a monetary claim there cannot be any irreparable loss if the injunction refused. In any case the injunction could not have been granted as the land is joint, without representation of shares and as Respondent No.2 is not a party to the agreement.

10. I have gone through the impugned order and it does not suffer from any infirmity so as to require interference in this Appeal. The Appeal is without any merit and it is accordingly dismissed, with no order as to costs.

11. Pending Interim Application, if any, is also disposed of.

C.V. BHADANG, J.