

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

**APPEAL FROM ORDER NO.1057 OF 2022
WITH
INTERIM APPLICATION NO.19885 OF 2022**

Mr. Ganesh Atmaram Mokashi ..Appellant
Versus
Mr. Ravindra Madhavrao Palande & Ors. ..Respondents

Mr. Omkar S. Paranjape, for the Appellant.
Mr. S. P. Golekar, for Respondent Nos.1 to 8.

CORAM : NITIN W. SAMBRE, J.

DATE : 21st NOVEMBER, 2022

PC.

1. The challenge in the appeal is to the order dated 5th September, 2022 passed by Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.1312 of 2022 which is for specific performance. By the order impunged, the Trial Court has rejected the prayer of the appellant/plaintiff for grant of temporary injunction.

2. The suit of the appellant is based on the oral agreement of sale dated 19th May, 2019 entered into with defendant Nos.1 and 2. It is an admitted position on record that defendant Nos.1 to 9 are the joint owners of the property. It is the case of the appellant that the suit property was agreed to be sold for a total consideration of Rs.2,00,00,000/- (Two Crores), as against which an amount of Rs.12,00,000/- (Twelve Lakhs) was accepted on 31st October, 2019 in addition to amount of Rs.1,00,000/- (One Lakh) which was received on

19th May, 2019. As such, the suit for specific performance was brought in action based on oral contract.

3. In the said suit, an application taken out at Exh.5 for grant of temporary injunction thereby restraining the respondent from altering the suit property or from creating third party interest.

4. The Trial Court rejected the prayer for grant of ad-interim temporary injunction vide impugned order. As such, this appeal.

5. The contentions are, the defendant Nos.1 and 2 were acting on behalf of defendant Nos.3 to 9 is specifically pleaded, as all the nine defendants are co-owners of the property. It is claimed that an amount of Rs.13,00,000/- (Thirteen Lakhs) is received by defendant Nos.1 and 2 for and on behalf of the defendants and as such, other defendants since have not objected at the relevant time, accepted the case of oral agreement. It is further claimed that there is every likelihood of wasting of the suit property during the pendency of the proceedings before the Trial Court and as such, the order of injunction is necessary.

6. Counsel for the respondents would support the order impugned and urge that the appeal is liable to be dismissed.

7. Considered submissions.

8. The case of the appellant is that of an oral agreement dated 19th May, 2019 as against total consideration of Rs.2,00,00,000/- (Two Crores) for the sale of the property in question. The appellant has relied

on the mobile and text messages sent by the respondents.

9. The appellant has failed to demonstrate his source of income in cash of Rs.13,00,000/- (Thirteen lakhs) before this Court, so also the Court below. Apart from above, the theory of oral contract for agreement of sale is not substantiated by any other corroborating evidence, such as disclosing source of income, affidavit of the parties who have supported the appellant in collecting the amount of consideration and witnesses to the alleged oral contract etc. That being so, the Court below was justified in recording findings that the appellant has failed to demonstrate *prima-facie* case, so also balance of convenience.

10. That being so, the Appeal from Order stands rejected.

11. In view of rejection of appeal, pending interim application also stands disposed of.

12. At this stage, counsel for the appellant has requested for staying this order for a period of four weeks, which prayer is opposed by the counsel for the respondents.

13. For the reasons stated in the aforesaid order and also by the Trial Court, particularly of existence of oral contract, prayer for grant of stay stands rejected.

[NITIN W. SAMBRE, J.]