

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO. : 38 OF 2023
WITH
CIVIL APPLICATION NO. 7568 OF 2023 IN AO/38/2023**

1. Santoshkumar s/o Madanlalji Mutha,
Age – 51 yrs, Occu – Business & Agri.
2. Chetan s/o Santoshkumar Mutha,
Age – 27 yrs, Occu – Business & Agri.
3. Rajesh Nandkishor Kamad,
Age – 51 yrs, Occu – Business & Agri.
4. Saket s/o Rajesh Kamad,
Age – 24 yrs, Occu – Business & Agri.

All Resident of Murari Nagar, Sadar
Bazar Jalna, Tal. Dist. Jalna.

... APPELLANTS

VERSUS

1. Brijmohan Ramchandra Bhurewal (Arya),
Age – 70 yrs, Occu – Agriculture,
R/o Dhorpura, Rahemanganj, Jalna,
Tal. Dist. Jalna.

... RESPONDENT

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Advocate for the Appellants :- Mr. Mahesh R. Sonawane

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CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 26.06.2023

PRONOUNCED ON : 04.07.2023

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ORDER :

1. By the present Appeal from Order, the appellants are challenging the order dated 18.05.2023 passed by the 2nd Joint Civil Judge Senior Division, Jalna in Special Civil Suit No.433 of 2022 below Exh.5, rejecting the application filed by the appellants – plaintiffs.

2. The plaintiffs - appellants have filed a suit for specific performance of contract, declaration and perpetual injunction against the defendant. It is the case of the plaintiffs that the defendant along with his brothers are the owners and possessors of land admeasuring 1 Hector 91 R. in Survey No. 146 situated at Jalna, Taluka and District Jalna. The agreement of sale dated 14.05.2021 is executed by the defendant to sell his suit land to the plaintiffs for consideration of Rs.76,51,000/- per acre and received earnest amount of Rs.5,00,000/- through RTGS of Jalna Merchant Co-operative Bank Ltd. Jalna. The plaintiffs – appellants filed a suit for specific performance as the defendant intended to sell the property to some other third person, who had issued a public notice in the newspaper. In Special Civil Suit No.433 of 2022, the plaintiffs – appellants have also filed an application seeking direction against the defendant not to

create third party interest in the said suit.

3. The trial Court on examination of the agreement to sell dated 14.05.2021 held that the said agreement contemplates payment of Rs. 45,00,000/- out of consideration amount after the notice period is over. The notice is published on 21.11.2022 and period of notice is over on 21.12.2022. The suit is presented on 13.12.2022. The cancellation of agreement notice was sent by the defendant on 31.05.2022 after expiry of one year period of agreement of sale dated 14.05.2021.

4. The learned trial Court held that it was incumbent on the part of plaintiffs to show prima facie that they have performed their part of contract of sale by making payment of Rs. 45,00,000/- to the defendant within stipulated period. But they have failed to show that they were prima facie willing to perform their part of contract. They have not made any attempt for payment of Rs. 45,00,000/-. They have also failed to show that they tried to send the money through Cheque, D.D. or any other mode after expiry of the notice, and that the defendant has refused to accept the same. On the contrary, without making payments, the plaintiffs are

creating obstacle in the land of defendant from enjoying his property. Their conduct does not prima facie appear to be fair and clean. The trial Court refused for granting equitable relief of injunction in their favour.

5. The trial Court has observed that the plaintiffs have opportunity to register the *lis pendence* notice about pending suit before the Sub-Registrar office of Section 18(ee) of the Registration Act, and further, Section 52 of the Transfer of Property Act, 1872 is adequate to secure the interest of the plaintiffs.

6. Apart from this, the trial Court has also observed that the prima-facie the plaintiffs conduct are not free from blame. And since the relief is wholly equitable in nature, the plaintiffs invoking the jurisdiction of the Court has to show that the plaintiffs are not at fault and they themselves were not responsible for bringing about the state of things complained of and that they were not unfair or inequitable dealings with the party against whom they are seeking relief. Thus, the trial Court has dismissed the application for injunction.

7. The plaintiffs have challenged the order of the trial

Court before this Court. The learned counsel submits that as per the clause in that agreement dated 14.05.2021, the defendant at his own expenses, after excluding the area that would go into road demarcation whatsoever remaining land available with the defendant will be sold to plaintiffs and that he was required to measure the same. An amount of Rs. 45,00,000/- was to be paid by the plaintiffs to the defendant only on the publication of public notice in newspaper and only if no objection has been raised by any party for sale of his property. The balance consideration was paid within one year from the publication of the public notice.

8. It is further the case of the plaintiffs that the plaintiffs requested the defendant to measure the land and to enable the plaintiffs to publish the public notice in newspaper for calling any objection, if any, but the defendant postponed the measurement under one or the other pretext. At last, on 11.04.2022 the plaintiffs have published public notice in daily newspaper through the Advocate calling objection, if any. And thereafter in daily newspaper "Parshwabhumi" dated 15.04.2022. It is further the case of the plaintiffs that he received an objection from the cousin sister of the defendant for getting share in the suit land. Thereafter the plaintiffs

requested the defendant to settle the dispute and the defendant instead of settling the dispute has gone ahead and attempted to sell the suit land to some other person. Thus, the plaintiffs are entitled to get the relief of injunction as of the defendant.

9. Having considered the submissions of the plaintiffs as against the consideration of amount of Rs.3.5 Crores the plaintiffs have paid sum of Rs. 5,00,000/-. The plaintiffs even today after two years of the agreement having passed have not come forward with Rs. 45,00,000/-. The plaintiffs also did not issue notice to the defendant immediately after the agreement for measurement of the suit land. The contention of the plaintiffs that just because there is an objection for sale of land, he can forever postpone the past payment of further amount of Rs.45,00,000/- and restrain the defendant from enjoying his property land can not be accepted. The trial Court has rightly dismissed the application for injunction.

10. In view of the above, the present Appeal From Order is also dismissed.

11. Civil Application is also disposed of.

(ARUN R. PEDNEKER)
JUDGE

shp/-