

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

CIVIL APPLICATION NO. 14838 OF 2022
IN SA/720/2022 WITH SA/720/2022

SURESH PREMRAJ MUTHA
VERSUS
DR. LAXMAN RAMRAO NAGARGOJE AND OTHERS

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Advocate for Applicant : Mr. Deshmukh Sachin S.
Advocate for Respondent Nos. 1, 2 (i), (ii), 2 (iv) & 3 : Mr. R.F. Totala
Senior Counsel i/b. Mr. Swapnil V. Lohiya

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CORAM : R.M. JOSHI, J.
DATE : 06th April, 2023

PER COURT :

1. Heard.

2. This Civil Application is filed for seeking injunction against respondents / original defendants restraining them during pendency and final hearing of the present Second Appeal from creating any third party interest in respect of the suit property and further not to part with the possession thereof to third party.

3. Learned counsel for the appellant / original plaintiff states that in the suit for specific performance of the contract on the basis of agreement to sale Trial Court has decreed the suit and the said judgment is reversed by the first appellate Court, whereby, the suit came to be dismissed. Being aggrieved by the said judgment, present

Second Appeal is filed. According to him, after considering, *prima facie*, case made out by the appellant substantial question of law has been framed by this Court. He also drew attention of the Court to the order passed on review while challenging framing substantial question of law. According to him, only after being satisfied, *prima facie*, this Court has entertained the appeal and hence, the substantial question of law is framed and the submissions of rival parties are now open for consideration only at the time of final hearing of the appeal. According to him, this is not the stage to re-appreciate the material evidence on record as sought to be canvassed by the respondent. He claims that the suit property deserves to be protected till the decision of the appeal. To support his submission, he places reliance on the following decisions as under :

1. *Hari Shankar and others Versus Satya Prakash and another*, **1982 AIR (Rajasthan) 183**,
2. *Dalpatkumar and another Versus Prahlad Singh and others*, **(1992) 1 SCC 719**,
3. *Deoraj Versus State of Maharashtra and others*, **(2004) 4 SCC 697**,
4. *Peddi Ashok Kumar and others Versus Peddi Sudarshan Rao*, **(2009) 14 Supreme Court Cases 194**,

5. *Anil Kumar Singh Versus Vijay Pal Singh and others*,
(2018) 12 Supreme Court Cases 584,

6. *Laxman Ramrao Nagargoje and others Versus Suresh Premraj Mutha*, **order passed by this Court at Aurangabad Bench in Civil Application No. 4414 of 2007 in First Appeal No. 587 of 2007 dated 17th April, 2008,**

7. *Laxman Ramrao Nagargoje and others Versus Suresh Premraj Mutha*, **order passed by this Court at Aurangabad Bench in Second Appeal No. 565 of 2021 with Civil Application No. 12421 of 2021 dated 30th November, 2021.**

4. Learned counsel for the respondents / original defendants contended that the plaintiff / appellant has failed to make out any prima facie case and show that the balance of evidence lies in his favour in order to seek the relief of injunction against the defendant. He submits that the agreement to sale does not create any right into the property in favour of the plaintiff. Hence, unless, *prima facie*, there is material on record to indicate that it is a fit case to grant injunction, the owner of the property cannot be restrained by issuing order of injunction. He drew attention of the Court to the evidence on record in particular testimony of plaintiff and Vasant Pimplapure in order to argue that the said Vasant Pimplapure in his individual capacity has

singed the agreement of sale and that he cannot be said to have represented other plot owners. It is also pointed out that there is no evidence that defendants received any consideration or part thereof. During the course of the submissions, he made a proposal that if the defendants be permitted to develop suit plots by carrying out construction thereon and ultimately, if they fail in this appeal, they are ready to furnish undertaking for removal of the said construction at their costs and to hand over the possession of the suit property to the successful plaintiff.

5. This submission is opposed by the counsel for the appellant, firstly, by stating that in application moved by the appellant, respondent cannot seek any relief. Secondly, according to him, the suit property needs to be preserved as it is being subject matter of the Second Appeal.

6. There is no dispute about the fact that the plaintiff has filed suit for specific performance of contract in respect of suit property which are open plots. The suit is based upon an agreement to sale purported to have been signed by the constituted attorney of the owners of the plot. The question as to whether he was signatory to the agreement as constituted attorney, or signed it in his individual

capacity can be decided now only at the stage of final hearing. It is not open for this Court to offer any comment on the said piece of evidence even for the purpose of considering the application in hand.

7. At this stage, the Court is only required to see as to whether the suit property deserves to be protected and *prima facie* case made out by appellant to that effect. In this regard, it is material to note that the relief sought by the appellant is restraining the defendants / respondents from creating third party interest into the suit property and not to part the possession thereof to the third party. This is not the case where none of the Court has accepted the case of the plaintiff. Since the Trial Court has accepted the case of the plaintiff and decreed the suit, at least there is one finding before this Court in order to show that the contention of the plaintiff about the agreement of sale being binding upon the defendants could be accepted if appellant succeeds in this appeal.

8. Since the suit for specific performance of contract in respect of the plots owned by the defendants, the said suit properties needs to be preserved till the decision of Second Appeal. The injunction sought would ensure that the suit property in its present form is preserved.

9. As far as the contention of the counsel for the defendants about permitting the defendants to develop the suit property is concerned, first of all, such request cannot be considered while deciding application filed by appellant. It is not permissible for this court to enlarge the scope of the said application. Thus, this Court find no reason to express any view with regard to the said submissions made on behalf of respondents / defendants.

10. In the facts and circumstances of the case for the purpose of preserving suit property till decision of the Second Appeal application deserves to be allowed.

11. Civil Application is allowed in terms of prayer clause (B).

[R.M. JOSHI, J.]