

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 140 OF 2023.
WITH
INTERIM APPLICATION NO. 1799 OF 2023
IN
APPEAL FROM ORDER NO. 140 OF 2023

Ratnakar Ganpati Palanakar

.. Appellant

vs.

Prashant Manvendranath Nirmal & Ors.

.. Respondents

...

Mr.Ishaan Kapse, with Surel Shah, for the Appellant.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 31 AUGUST 2023.

P. C.:

1. By this Appeal, the Appellant challenges order dated 1st November 2022 passed by the Civil Judge, Senior Division, Jaysingpur, Kolhapur rejecting Plaintiff's Application for temporary injunction.

2. Plaintiff has filed Special Civil Suit No. 29 of 2022 *inter-alia* for specific performance of the agreement for sale dated 9th May 2016. Plaintiff also sought a declaration for setting aside the

Sale Deed dated 5th May 2018 executed by Defendant Nos. 1 and 2 in favour of Defendant Nos. 3 to 5 as well as the Sale Deed dated 19th June 2020 executed by Defendant No.3 in favour of Defendant No.6.

3. Plaintiff filed an Application for temporary injunction to restrain Defendant Nos.3 to 6 from creating third party rights in the suit property.

4. I have heard the learned counsel appearing for the Appellant and I have considered the submissions canvassed by him.

5. The trial Court has rejected the Application for temporary injunction on account of delay on the part of the Plaintiff in setting out a challenge to the Sale Deed dated 5th May 2018. The Plaintiff is also accused of delay in seeking specific performance of the Agreement dated 9th May 2016. Additionally, the trial Court has taken into account conduct of the Plaintiff in executing an Agreement for sale dated 18th April 2019 for purchase of smaller portion of land out of the portion agreed to be purchased by Agreement dated 9th May 2016. Based on this conduct of the Appellant in executing Agreement to Sale deed dated 18th April 2019, the trial Court has arrived at a conclusion that the consideration paid for Agreement to Sale dated 9th May 2016 seems to have been adjusted against the transaction covered by Agreement for Sale dated 18th April 2019.

6. In that view of the matter, trial Court cannot be faulted for recording a finding that Plaintiff has failed to make out any *prima-facie* case. Injunction, being discretionary relief, has rightly been rejected considering the conduct of the Plaintiff.

7. Appeal is devoid of merit. It is dismissed without any orders of costs.

SANDEEP V. MARNE, J.