



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

**APPEAL FROM ORDER NO.67 OF 2023
WITH
CIVIL APPLICATION NO.14339 OF 2023**

**SAMADHAN JAGANNATH PATIL
VERSUS
PREMCHAND PITAMBAR BHOLE AND OTHERS**

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Advocate for the Appellant : Mr. L. V. Sangeet
Advocate for Respondent No.1 : Mr. Mukul S. Kulkarni
Advocate for Respondent No.2 : Mr. S. H. Tripathi
Advocate for Respondent Nos.3 & 4 : Mr. Tushar M. Tandale

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 12/03/2024.

ORDER :

1. The present appeal is directed against the order passed by learned 4th Joint Civil Judge Senior Division (hereinafter referred to as 'the learned trial court) on 11/09/2023 below Exhibit-49 in Special Civil Suit No. 213 of 2022.

2. The appellant is the original plaintiff is coming with a case that the present respondent No.1 i.e. original defendant No.1 in the aforesaid suit, had agreed to sell the suit property to him for Rs.1,41,00,000/- per acre under an oral agreement to sale in presence of witnesses namely Atul Choudhary, Vilas Bhole and

Sanjay Bhombe. Accordingly, the appellant / plaintiff paid an amount of Rs.5,00,000/- to the present respondent No.1 in three installments. Thereafter, the appellant also arranged 1/4 amount of total sale consideration and therefore, respondent No.1 purchased stamp paper for reducing the agreement to sell in writing. However, respondent No.1 demanded certain more consideration and after negotiation, it was fixed to Rs.1,55,39,568/- per acre. However, respondent No.1 instead of completing the said transaction, sold the suit property to present respondent Nos.2 & 3 on 27/09/2022 by way of a registered sale deed. As such, the appellant was constrained to file an application for restraining defendant Nos.3 & 4 from creating third party rights over the suit property.

3. The learned counsel for the appellant vehemently argued that respondent No.1 despite accepting the earnest money of Rs.5,00,000/-, refused to sell the suit property to the appellant/ plaintiff and as per the oral agreement to sell in respect of the suit land, the injunction as prayed needs to be granted to avoid multiplicity of proceedings in future.

4. On the contrary, the learned counsel for respondent Nos.1 to 3 supported the impugned order. The learned counsel for respondent No.2 also relied on the judgment of the **Hon'ble Apex Court** in the case of **Best Sellers Retail (INDIA) Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. And others, reported in 2012(5) Mh.L.J. 769**, wherein it is observed that when the claim for damages is made in the suit then the temporary injunction cannot be granted since the loss to the plaintiff can be compensated in terms of money.

5. Heard rival submissions. Also perused documents on record alongwith the impugned order.

6. Admittedly, concept of oral agreement to sell is recognized by the law. However, in the instant case, the draft of proposed agreement to sell prepared by the appellant / plaintiff never came in existence as it was not signed either by the appellant / plaintiff or respondent No.1. Moreover, the suit land is already transferred in the name of respondent Nos.2 & 3 by way of a registered sale deed and if any further transfer of the suit property takes place, then it would always be subjected to doctrine of *Lis-pendens* as per Section 52 of the Transfer of Property Act. It appears that the

appellant only by paying a meager amount of Rs.5,00,000/- against the suit property having value to the tune of Rs.1.5 crore per acre, wants to claim right over the property. Thus, considering these aspects, it appears that the appellant / plaintiff has failed to establish *prima face* case. Further, the appellant /plaintiff has also claimed refund of earnest money alongwith interest by way of alternate relief which suggests that an irreparable loss which the appellant / plaintiff is claiming can be compensated in terms of money. As such, rejection of application for temporary injunction at the hands of the learned trial court, appears proper in the circumstances of this case. Accordingly, there is no substance in the appeal and it stands dismissed.

7. In view of dismissal of the appeal from the order, pending civil application, if any, also stands disposed of.

(SANDIPKUMAR C. MORE, J.)