

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 813 OF 2024
WITH
INTERIM APPLICATION NO. 14791 OF 2024

Vimalkumar Sancar And Another

...Appellants/
Applicants

Versus

Smt. Vilma Fernandes @ Vilma Maria Da Fatima
Fernandes And Others.

...Respondents

Ms. A.R.S. Baxi i/b Milind Deshpande for the Appellants.

CORAM : M.M. SATHAYE, J.
DATE : 19th NOVEMBER 2024

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Date: 2024.11.19
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P.C. :

1. Heard learned counsel for the Appellants. Appellants are Plaintiffs and Respondents are Defendants.
2. The Appeal is filed challenging the order dated 22.08.2024 passed by the learned Civil Judge Senior Division, Daman below Exh.5 in Special Civil Suit No. 49 of 2023. By the said impugned order, the prayers for interim injunction restraining the Respondents from alienating, transferring or creating 3rd party interest or from constructing over the suit property, is rejected.
3. Perused the impugned order.
4. It is the case of the Plaintiffs that there was oral agreement for sale of subject matter property by the Defendant Nos. 1 to 5 to them, for

a total consideration of Rs.2.70 Crore in the month of January, 2019. It is contended that the Plaintiffs have paid Rs.50,000/- as earnest money in cash in presence of 2 witnesses. It is further contended that though the Plaintiffs were silent during the Pandemic period, thereafter Defendant No.2 increased the consideration amount to the tune of Rs.2.90 Crore and the Plaintiffs showed willingness to pay Rs.51 Lac.

5. The Trial Court has held that the whole claim is based on oral agreement of sale. There is nothing on record to show that Defendant No.2, with whom there are certain WhatsApp chats indicating possibility of transaction, was authorized on behalf of Defendant Nos. 1, 3, 4 and 5 for such oral agreement. It can be seen from the prayers in the plaint that already Defendant Nos. 1 to 5 had entered into Agreement for Sale dated 28.08.2023 in favour of Defendant No. 6 which was presented for registration and registered in the office of the Sub-Registrar, Daman, when suit was filed. A declaration is sought that said agreement dated 28.08.2023 is illegal, null and void.

6. It is therefore clear that Defendant Nos. 1 to 5 have together agreed in writing to sell subject matter property to Defendant No.6 under a registered document. The suit is filed in October, 2023 apparently after the Agreement for Sale was registered between the Defendants.

7. Learned counsel for the Appellants relied upon the Affidavits of 2 witnesses who have stated that they have witnessed the transaction and payment of earnest money in cash. Mere affidavits by the witnesses would not be sufficient to indicate such strong *prima facie* case, so as to warrant injunction against the Respondents not to create further 3rd

party interest, especially when mere Rs. 50,000/- is alleged to be paid as earnest money, that too in cash for total alleged consideration of 2.70 Crore.

8. In the aforesaid facts and circumstances, the impugned order has rightly concluded lack of *prima facie* case in favour of the Appellants/Plaintiffs. The impugned order is based on material available before the Court and no fault can be found with the same. There is no error apparent on the face of record or perversity.

9. Hence, Appeal from Order is dismissed. In view of dismissal of Appeal from Order, Interim Application is also dismissed.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)