

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 767 OF 2024
WITH
INTERIM APPLICATION NO. 14418 OF 2024
IN
APPEAL FROM ORDER NO. 767 OF 2024**

Shri Rahul Mulji Patel & Anr ...Appellants
Versus
Shri. Nanasaheb Chindu Vidhate & Ors. ...Respondents

Mr. S.S. Patwardhan i/b. Ms. Mrinal Shelar for Appellants.
Mr. Mahesh Vishwakarma a/w. Ms. Naina Sharma, Ms Gauri Bandre i/b. Mr.
Chandrakant Nanekar for Respondent Nos. 1 to 4, 4A & 4B.

CORAM : M. M. SATHAYE, J.

DATED : 18th NOVEMBER 2024

P.C.:

1. Heard learned Counsel for the Appellants/Original Plaintiffs and learned Counsel for the Respondent Nos. 1 to 4B (legal heirs of the Original Defendant Nos. 1 & 2). Apparently present Respondent Nos. 5 & 6 are the Original Defendant Nos. 3 & 4.

2. This Appeal from Order is filed challenging the impugned order dated 09/07/2024 by which the Appellants' Application below Exhibit-5 is rejected. By the said Application, Appellants were seeking interim injunction not to disturb their purported possession and not to create third party rights or change the nature of the subject matter property. The said Application is dismissed.

3. The suit is for specific performance of the agreement to sell dated 07/01/2022, which is notarized on 13/01/2022.

4. Learned Counsel for the Appellants invited this Court's attention to the notice reply dated 26/06/2023, which *prima facie* indicates that an amount of Rs.2,75,00,000/- claimed to be paid under the transaction, towards earnest money / part payment, is admitted in clause 2(a) and 2(b) of the notice reply issued on behalf of the Original Defendant No. 1 and the legal heirs of the Original Defendant No. 2. Learned Counsel for the Respondent Nos. 1 to 4B disputes receipt of part of this amount. Learned Counsel for the Appellants further submitted that the Defendant No. 2 was ill and died on 13/10/2022 and his legal heirs were brought on revenue records in March 2023 and notice of termination was issued in the same month i.e. March 2023.

5. Perusal of the impugned order shows that the injunction is refused mainly on the ground that within the time limit provided under the agreement to sell i.e nine months, the transaction is not completed. It further appears from the impugned order that on 06/08/2023, Respondent Nos. 1 to 4B have sold part of the suit property to the Respondent Nos. 5 & 6 for a consideration of Rs.8,15,00,000/-.

6. Considering the aforesaid facts and circumstances, arguable case is made out. Hence, the following order.

(a) Issue notice to the Respondents, returnable on 16/12/2024. Learned Counsel for Respondent Nos. 1 to 4B waives service. In addition to Court's notice, private notice is permitted.

(b) Till the next date, there will be an ad-interim relief, restraining the Respondents from creating further third party interest or encumbrances on the subject matter undivided share of the original Defendant Nos. 1 and 2, as specified in the suit.

(c) It is clarified that pendency of this Appeal from Order will not preclude the Trial Court from proceeding with the suit.

(M. M. SATHAYE, J.)