

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

Appeal from Order No. 976 of 2011  
WITH  
Civil Application No. 1298 of 2011 IN AO 976/2011

Smt. Madhurani Vashistha Gupta	....Appellant
v/s.	
Mr. Sachin Ramesh Lokhande & ors.	....Respondents

Mr. S.A.Sawant with Abhishek Deshmukh for the appellant.  
Ms. Gauri Godse for the respondent.

**CORAM: R.M. BORDE, J.**  
30th September, 2011

**PC:**

This Appeal from Order can be disposed of by directing the trial Court to dispose of the pending suit expeditiously. The appellant-original plaintiff is taking exception to the order passed on 19<sup>th</sup> July, 2011 below exhibit 5 in Special Civil Suit No. 20/2011. The appellant-original plaintiff instituted suit claiming specific performance of agreement executed by the defendants in favour of the plaintiff on 26<sup>th</sup> June, 2010. The plaintiff agreed to purchase agriculture property admeasuring 1Hectar and 73.2 R at the of Rs. 50,00,000/- per Acer. It was agreed between the parties that a sum to the extent of 30% of the total consideration amount would be paid by the plaintiff to the defendants by 15<sup>th</sup> July, 2010 and balance amount was required to be paid within five months thereafter. It was the responsibility of the defendants to take appropriate permission for alienation of the property from the competent revenue authorities. As the plaintiff failed to abide by the terms of agreement in respect of payment of amount, it appears that defendant cancelled the agreement on 1<sup>st</sup>

November, 2010. There is a cancellation deed allegedly executed between the parties on 1<sup>st</sup> November, 2010, however, the plaintiffs are disputing the genuineness of said cancellation deed. It will not be proper to make any comments in that regard at this interlocutory stage and it is for the trial Court to consider the contentions of the respective parties after recording evidence in the matter. As stated above, the plaintiff has presented suit claiming specific performance of agreement in which application was also presented at exhibit 5 seeking injunction order against the defendants restraining them from creating third party rights. The application tendered by the plaintiff came to be rejected by the trial Court. As such the plaintiff-appellant has approached this Court.

2. After hearing arguments of the respective Counsels appearing for parties for sometime, the appellant-original plaintiff has expressed his willingness to deposit the total amount of consideration excluding the amount already paid before the trial Court as a condition precedent for grant of restraining order in respect of creation of third party interest. Counsel appearing for the appellant-original plaintiff makes a statement on instructions that the plaintiff would deposit the total amount of Rs. 2,15,50,000/- (Rupees Two Crores, Fifteen Lacs and Fifty Thousand only) in the trial Court within six weeks from today. On condition of deposit of the amount as agreed, there shall be a restraining order against the defendants restraining them from creating third party interest in respect of disputed property. The respondent no.1 who is also power of attorney holder of other respondents is present before the Court and he agrees for the arrangement suggested by the plaintiff. Hence, the following order is passed.

**ORDER**

(i) Appeal from Order is allowed.

(ii) The impugned order passed by the trial Court below exhibit 5 in Special Civil Suit No. 20/2011 decided on 19<sup>th</sup> July, 2011 is quashed and set aside and the defendants, their agents or servants or anybody claiming through them are restrained from creating third party interest in relation to suit property until disposal of the suit subject to condition of the plaintiffs depositing a sum of Rs. 2,15,50,000/- (Rupees Two Crores, Fifteen Lacs and Fifty Thousand only) in the trial Court within a period of six weeks from today.

(iii) In the event of failure of the plaintiff to deposit the amount as agreed, the interim order passed in this Appeal from Order shall be deemed to have vacated. The trial Court shall decide the pending suit as expeditiously as possible preferably within one year from today.

3. Appeal from Order stands disposed of. In view of disposal of Appeal from Order, Civil Application do not survive and stand disposed of accordingly.

4. It is clarified that deposit of the amount by the plaintiff is subject to rights and contentions of the plaintiff as well as defendants which they may raise before the trial Court.

**(R.M.BORDE, J)**