

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GONDIA.

(Presided over by A. T. Wankhede)

Regular Civil Appeal No.69/2023

(CNR:MHGO010013942023)

Suresh -Vs- Kesharbai+3

ORDER BELOW EXH.05

(Passed on 25th November, 2024)

This application is filed by the appellant/original plaintiff to restrain non-applicants No.1 and 2/respondents No.1 and 2 from creating third party interest in the suit property. The plaintiff filed Special Civil Suit No.45/2022 before the learned Civil Judge, Sr. Dn., Gondia for partition, separate possession and specific performance of contract. Said suit came to be decreed exparte against the defendants and defendants No.1 and 2 are jointly and severally directed to refund the earnest amount of Rs.2,20,000/- to the plaintiff. The relief of the plaintiff to execute registered sale-deed of the suit property in his favour came to be rejected.

2. Learned advocate for the plaintiff pointed out that the suit proceeded exparte against defendants No.1 and 2 and learned Civil Judge, Sr. Dn., Gondia has answered the issue of execution of agreement to sell dated 31.01.2022, payment of part consideration amount and that the plaintiff is ready and willing to perform his part of agreement in affirmative. However, partly decreed the suit and only directed defendants

No.1 and 2 to refund the earnest amount of Rs.2,20,000/-. It is argued that the plaintiff is having good case on merits. The plaintiff is having apprehension that defendants may during pendency of the appeal dispose-off the suit property and create third party interest in the suit property and in that event his appeal will become infructuous.

3. Certainly, on perusal of the impugned judgment and decree, it reveals that the issue of execution of agreement to sell, payment of part consideration of Rs.2,20,000/- and that the plaintiff was and is ready and willing to perform his part of contract, is answered affirmative. The appeal is statutory right of the plaintiff. The apprehension of the plaintiff is bonafide and reasonable that the defendants may create third party interest during pendency of the appeal and in that event he would be put to loss. Even in the present appeal though the defendants are duly served, failed to remain present. This shows the callous attitude of the respondents/original defendants. Hence, order:-

ORDER

1. Application Exh.5 is allowed.
2. Defendants No.1 and 2 are restrained to create third party interest in the suit property until further orders.

Place : Gondia.
Date : 25.11.2024.

Sd/-
(A. T. Wankhede)
Principal District Judge, Gondia.