

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

APPEAL FROM ORDER NO.317 OF 2014
WITH
CIVIL APPLICATION NO.366 OF 2014

Vishwajit Pandurang Kadam & Ors.

... Appellants

V/s.

Vikram Vijay Gosavi & Ors.

... Respondents

Mr. V. A. Thorat, Senior Advocate i/b. R. P. Kadam for the Appellants.
Mr. S. S. Koregave for Respondent Nos.2 and 3.
Mr. Balasaheb R. Deshmukh for Respondent No.1.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 23, 2015

P.C. :

1. Heard the learned senior counsel for the Appellants and the learned counsel for the Respondents.
2. By consent of the parties, the appeal is taken up for final hearing at the stage of admission itself.
3. This appeal is preferred by Defendant Nos.3 and 4 challenging the order dated 23/01/2014 passed by the 3rd Jt. Civil Judge, Senior Division, Satara below Exhibit 5 in Special Civil Suit No. No.99/2013 restraining the Appellants from making construction and/or creating any third party right, title and interest in respect of the suit property till final disposal of the suit.

4. For the sake of convenience the parties will be referred to as per their nomenclature in the suit i.e. the Appellants – as Defendant Nos.3 and 4, Respondent No.1 – as Plaintiff and Respondent Nos.2 and 3 – as Defendant Nos.1 and 2.

5. Initially, Defendant Nos.1 and 2 by agreement for sale dated 11/05/2009 agreed to sell the suit property i.e. land admeasuring 4.5 R out of 27 R from sy. No.8/2 situated at Godoli, Tq. Dist. Satara in favour of the Plaintiffs for the sum of Rs.14 lacs. At the time of executing the said agreement for sale, Plaintiffs paid sum of Rs.1,50,000/-. As per the terms and conditions of the said agreement for sale Plaintiffs were supposed to complete the sale transaction within 1 year and 3 months (clause 7 of the said agreement for sale).

6. Thereafter, Defendant Nos.1 and 2 executed registered agreement for sale dated 17/08/2011 in favour of Defendant Nos.3 and 4 in respect of the suit property for sum of Rs.12 lacs. As per the terms and conditions of the said agreement for sale, Defendant Nos.3 and 4 gave an advertisement in news paper dated 21/08/2011 calling upon the objections from public at large. Thereafter, the sale deed was executed by Defendant Nos.1 and 2 in favour of Defendant Nos.3 and 4 on 11/11/2011 accepting the entire consideration and also handed over possession of the suit property to Defendant Nos.3 and 4.

7. Thereafter Defendant Nos.3 and 4 started obtaining several permissions from various departments for development of the said

property.

8. Thereafter the Plaintiffs filed Special Civil Suit No.99/2013 in the court of Civil Judge, Senior Division, Satara for specific performance of agreement for sale dated 11/05/2009. They preferred Application below Exhibit 5 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for injunction restraining Defendant Nos.3 and 4 from carrying out any construction activities and/or creating any third party right, title and interest in respect of the suit property till hearing and final disposal of the suit. That Application was allowed by the Trial Court. Hence, the present appeal.

9. The learned senior counsel for Defendant Nos.3 and 4 submits that the Trial Court erred in coming to the conclusion that the Plaintiffs have made out a case for allowing their Application below Exhibit 5 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 restraining them from carrying out any construction activity and/or creating any third party right, title and interest in respect of the suit property. He submits that Defendant Nos.3 and 4, by registered agreement for sale dated 17/08/2011 agreed to purchase the suit property. Thereafter they published a notice in news paper on 21/08/2011 calling upon objections from public at large. As they did not receive any objection, they obtained sale deed from Defendant Nos.1 and 2 on 11/11/2011 by making payment of entire consideration. He further submits Defendant Nos.1 and 2 handed over possession of the suit property to them. Thereafter, they spent huge amount for development of the suit property. He further submits they

already applied to the concerned authority for obtaining N.A. permission as well as for sanction of their project. He submits that they already started taking amount from several prospective purchasers. He submits that these facts are not considered by the Trial Court and passed the interim order. He submits that though it is specifically stated in the agreement for sale dated 11/05/2009 between Defendant Nos.1 and 2 & Plaintiffs that they have to complete the transaction within 1 year and 3 months from the date of that agreement i.e. before 11/05/2009, the same was not completed by them. He submits that, the Trial Court failed to appreciate that there was delay on the part of the Plaintiffs to file the suit for specific performance of agreement. He submits that the Plaintiffs failed to make out any case for equitable relief in his favour. He submits that the Apex Court in the matter of ***Mandali Ranganna and Ors. Vs. T. Ramchandra and Ors. 2008 (11) SCC 1*** held that a person seeking injunction after long lapse of time by allowing the other parties to deal with the property exclusively, ordinarily not entitled to injunction.

10. On the basis of this submission, the learned senior counsel for Defendant Nos.3 and 4 submits that the impugned order passed by the Trial Court dated 23/01/2014 below Exhibit 5 in Special Civil Suit No.99/2013 requires to be set aside. He submits that if the said order is not set aside, irreparable loss and injury will be caused to them as they have already invested huge amount for development of the said property.

11. On the other hand, the learned counsel for the Plaintiffs

vehemently opposed the Appeal from Order. He submits that Defendant Nos.3 and 4 have not made out any case for allowing the Appeal from Order. He submits that admittedly, Defendant Nos.1 and 2 executed agreement for sale dated 11/05/2009 with them for sale of the said property. He further submits as per the terms and conditions of the agreement for sale, he took some steps i.e. for measurement of the suit property, division of the suit property and also applied for NA permission. He further submits that as per the terms and conditions of the said agreement for sale dated 11/05/2009, Plaintiffs paid sum of Rs.1,50,000/- to Defendant Nos.1 and 2. He further submits that the Plaintiffs were and are always ready and willing to perform their part i.e. payment of remaining amount to Defendant Nos.1 and 2. He further submits the Defendant Nos.3 and 4 had knowledge about the earlier transaction between the Plaintiffs and Defendant Nos.1 and 2. He submits that these facts are admitted by Defendant Nos.1 and 2 in paragraph 20 of their written statement. This itself shows that in spite of having knowledge about earlier transaction, Defendant Nos.3 and 4 purchased the suit property and therefore, they are not entitled to develop the same till hearing and final disposal of the suit. The learned counsel for the Plaintiffs further submits that the Trial Court specifically recorded in the order that till today Defendant Nos.3 and 4 have not obtained any NA permission for development of the suit property. Moreover, the plans are also not sanctioned by the Authority. Therefore, there is no question of irreparable loss and injury if the Defendant Nos.3 and 4 are restrained from developing the suit property. He submits that, the case-law relied upon by the Defendant Nos.3 and 4 in the matter of Mandali Ranganna (supra) is not

applicable in the facts and circumstances of the present case. He submits that in that Authority, the dispute was between family members about share of the family members. Whereas in the present matter, the dispute is about specific performance of agreement dated 11/05/2009. On the basis of this submission the learned counsel for the Plaintiffs submits that there is no substance in the present Appeal from Order and same to be dismissed.

12. The learned counsel for Defendant Nos.1 and 2 submits that as the Plaintiffs failed and neglected to comply with the terms and conditions of the agreement for sale dated 11/05/2009 within stipulated time, therefore, they sold the suit property to Defendant Nos.3 and 4 by registered sale deed. He submits that before executing the sale deed in favour of Defendant Nos.3 and 4 a public notice was given in two daily news papers dated 21/08/2011. He submits that neither Defendant Nos.1 and 2 nor Defendant Nos.3 and 4 received any objection pursuant to the notice about the transaction. Defendant No.1 and 2 executed sale deed in favour of Defendant Nos.3 and 4 and handed over possession to them. On the basis of this submission, the learned counsel for the Defendant Nos.1 and 2 submits that the impugned order passed by the Trial Court is against justice, equity and good conscience and same is liable to be set aside.

13. It is to be noted that in the present proceedings the Defendant Nos.3 and 4 purchased the suit property by registered sale deed dated 11/11/2011. Before executing the sale deed, they published a notice in the news paper dated 21/08/2011 calling upon objections from

public at large. The Defendant Nos.1 and 2 after accepting the entire consideration amount handed over the vacant and peaceful possession of the suit property to the Defendant No.3 and 4. Apart from that, the learned counsel for the Defendant Nos.1 and 2 also admitted that as the Plaintiffs failed and neglected to comply with the terms and conditions of the agreement for sale dated 11/05/2009, therefore, they sold the suit property to the Defendant Nos.3 and 4 by registered sale deed. Without considering these facts, the Trial Court, in paragraph 12 of the impugned order observed that if an injunction is refused, the Plaintiffs may deprive of their rights to purchase the suit property on the basis of the agreement. The Trial Court failed to consider the fact that the Defendant Nos.3 and 4 purchased the suit property by registered sale deed dated 11/11/2011 after giving public notice in news papers. Moreover, Defendant Nos.3 and 4 also accepted money from prospective purchasers. If, at this stage, an injunction order is passed against Defendant Nos.3 and 4 restraining them from carrying out any construction activities, irreparable loss, harm and injury will be caused to them. But at the same time, if they wish, they can develop the suit property at their risk, subject to outcome of the suit filed by the Plaintiffs for specific performance of agreement.

14. In the above mentioned facts and circumstances of the case, I am of the opinion that the impugned order passed by the Trial Court requires to be set aside. Hence, the following order:

- a) Appeal from Order is allowed.
- b) The impugned order dated 23/01/2014 passed by the 3rd Jt. Civil Judge, Junior Division, Satara below Exhibit 5 in Special

Civil Suit No.99/2013 is set aside.

c) The Application filed by the Plaintiffs below Exhibit 5 in Special Civil Suit No.99/2013 stands dismissed.

d) It is made clear that if any construction is carried out by Defendant Nos.3 and 4 on the suit property, that will be subject to outcome of the Special Civil Suit No.99/2013 and they will not claim any equity at that time.

e) Considering the facts and circumstances of the present case, hearing of the Special Civil Suit No.99/2013 is expedited.

f) This court expects that the Trial Court would dispose of the Special Civil Suit No.99/2013 finally as early as possible but in any case on or before 31/12/2015.

g) The Civil Application does not survive. Same stands dismissed as infructuous.

h) No order as to cost.

15. At this stage, the learned counsel for the Plaintiffs seeks stay of this order for a period of four weeks from today. Same is vehemently opposed by the Advocate for Defendant Nos.3 and 4.

16. Considering the fact that the order passed by the Trial Court was on 23/01/2015 and same was in force till today, the operation and implementation of the present order is stayed for a period of four weeks from today.

(K.K. TATED, J.)