

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

**APPEAL FROM ORDER NO. 399 OF 2013
WITH
CIVIL APPLICATION NO. 482 OF 2013
IN
APPEAL FROM ORDER NO. 399 OF 2013**

Satyanarayan L. Pasnur

..Appellant

Vs.

M/s United Developers, Solapur and Ors.

..Respondents

....
Mr. Ramdas Subban with Mr. Subhash Gulte, Advocates i/b D.G.
Dhanure for Appellant.

Mr. Anand S. Kulkarni, Advocate for Respondent Nos.1 and 2.

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CORAM : K.K. TATED, J.

DATED : 24 FEBRUARY 2015

P.C.:

1. Heard learned Counsel for parties.
2. This Appeal from Order is preferred by Defendant No.1 challenging the order dated 22 November 2012 passed by the Joint Civil Judge Senior Division, Solapur below Exhibit 5 in Special Civil Suit No. 30/2011 restraining the defendants from creating third party interest and cause any disturbance to the plaintiff's possession till final decision of the suit.
3. The plaintiffs filed suit for declaration that the sale deed dated 16 October 2009 was executed in the name of Defendant No.1 is

illegal and void and in that consequences, the sale deed executed by the Defendant No.1 in favour of Defendant Nos. 3 to 12 are illegal and void.

4. Originally, one Mr. Chandrasen Vishwanath Dudhale was the owner of the Survey No. 143 admeasuring 7H 90R situated at Kasba, Solapur within the extended limits of Solapur Corporation. Chandrasen Dudhale executed the power of attorney and development agreement dated 10 May 1991 in favour of Samarth Developers. Thereafter Samarth Developers executed the power of attorney as well as development agreement in favour of the plaintiff on 10 March 2003 and since then the plaintiff is in possession of the suit property. As soon as plaintiff learned that Defendant No.1 executed the sale deed in favour of the Defendant Nos. 3 to 12, they filed the Special Civil Suit No. 30/2011 and preferred application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for injunction. The said application was decided by the Trial Court by impugned order dated 22 November 2012, hence the present Appeal from Order is preferred by the Defendant No.1.

5. The learned Counsel for Defendant No.1 submits that the Defendant No.1 purchased the said property from Chandrasen Dudhale by sale deed dated 16 October 2009 and since then he is in possession. He submits that the plaintiff brought on record the death certificate of Chandrasen Dudhale showing that he expired on 23 April 1993. He

submits that if the case of the plaintiff is admitted that Chandrasen Dudhale expired on 23 April 1993, then the transaction between Samarth Developers and the plaintiff is also null and void in view of Section 190 and 201 of the Indian Contract Act, 1872. He submits that these facts are not considered by the Trial Court, hence the impugned order passed by the Trial Court is required to be set aside.

6. I heard both the learned Counsel. In the present proceedings, the case of the Defendant No.1 is that he has purchased the suit property from the owner Chandrasen Dudhale by sale deed dated 16 October 2009 whereas the plaintiff placed on record the death certificate of Chandrasen Vishwanath Dudhale showing that he has died on 23 April 1993. If the owner died in 1993, there is no question of executing sale deed in favour of the Defendant No.1 in the year 2009. This fact has been considered by the Trial Court and allowed the application below Exhibiti 5 under Order 39 Rule 1 and 2 of the Code of Civil Procedure. In view of this fact, I do not find any substance in the present Appeal from Order. Hence same is dismissed.

7. In view of the dismissal of Appeal from Order, nothing survives in pending Civil Application. Same stands rejected as infructuous.

[K.K. TATED, J.]