IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.490 OF 2014
WITH
CIVIL APPLICATION NO.574 OF 2014

Shri Santosh Vithal Kate and Anr. .. Appellants

Vs.

Shri Murlidhar Tukaram Dodkar and Ors .. Respondents

Mr.S.A.Sawant i/b Mr.Himunshu Kode for the appellant

Mr.R.S.Kadam for the respondent nos. 1 to 20

CORAM : K.K.TATED, J.
DATED : 02/03/2015

PC:

1 Heard the learned counsel for the parties.

2 This appeal is preferred by the defendant nos.1 and 2 challenging the order dated 6.3.2014 passed by Civil Judge, Senior Division, Pune dated 6.3.2014 below Exhibit 5 in Special Civil Suit No. 1285 of 2013 restraining Appellants from creating any third party right, title and interest in respect of remaining 9 Acres and 33 R land till the hearing and final disposal of the suit.

3 The appellants are original defendant nos.1 and 2 who purchased the suit property i.e. land admeasuring 7H 53R from Gut No.580

situated at Village Tukdi, Taluka Khed, District Pune by registered Sale Deed dated 19.04.2012 from respondent nos.1 to 20 plaintiffs for consideration of Rs.3,17,00,000/-. Out of the consideration, the defendant nos.1 and 2 paid Rs.2,79,04,000/- to the plaintiffs by various cheques and cash. The amount of Rs.37,96,000/- remained to be paid as the plaintiff raised objection with the Revenue Department for transferring the suit property in the name of defendant nos.1 and 2. Initially the plaintiff raised objection before the Revenue Department on 28.8.2012. Hence, defendant nos.1 and 2 stopped further payment on 16.11.2012. Thereafter, Circle Officer, Kanersar, Taluka Khed, Pune in Case No.S.R. 18 of 2012 rejected plaintiffs application under section 149 and 150 of Maharashtra Land Revenue Code, 1966. Thereafter, the plaintiffs preferred R.T.S.Appeal No.2 of 2013 under section 247 of the Maharashtra Land Revenue Code, 1966 before Sub-Divisional Officer, Rajguru Nagar (Khed) for cancellation of Mutation Entry No. 1723 in respect of the suit property. That application was also dismissed. Thereafter the defendants received legal notice dated 29.1.2013 from plaintiffs. They replied the same through their advocate on 1.3.2013 stating that they are ready and willing to pay remaining amount immediately subject to that plaintiff withdrawing their objection before the Revenue Authority. Thereafter, plaintiff filed Special Civil Suit No. No.1285 of 2013 for cancellation of Registered Sale Deed dated 19.4.2012 executed by them in favour of defendant nos.1 and 2. In that suit, plaintiff preferred application below Exhibit 5 under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 for an injunction restraining defendant nos.1 and 2 from creating any third party right, title and interest in respect of the land 9 Acre 33R from suit property till the hearing and final disposal of the suit. That application was allowed by trial court by order dated 06.03.2014. Hence, the present Appeal from Order.

4 The learned counsel appearing for defendant nos.1 and 2 submits that the trial court erred in coming to the conclusion that the plaintiff made out a case for an order of injunction restraining defendant nos.1 and 2 from creating any third party right, title and interest in respect of the suit property. He submits that admittedly by registered Sale Deed dated 19.4.2012 plaintiffs sold 7 Hector 53 R land to the defendant nos.1 and 2 for a total sum of Rs.3,17,00,000/-. Out of the said amount, defendant nos.1 and 2 paid sum of Rs.2,79,04,000/-. He submits that defendants are ready and willing to pay remaining amount of Rs.37,96,000/- to the plaintiffs subject to the plaintiffs withdrawing their objection before the Revenue Authority. He submits that as soon as the plaintiff filed objection before the Revenue Authority in respect of the suit property, they stopped payments of two cheques i.e. cheque no.30.5.2012 of 19,96,000 and another cheque dated 30.5.2012 of Rs.18,00,000/-. He submits that even the objection raised by the plaintiff before the revenue authority was rejected by Circle Officer by order dated 17.11.2012 in Complaint Case No. 18 of 2012. Thereafter the plaintiff preferred R.T.S.Appeal No.2 of 2013 under section 247 of the Maharashtra Lane Revenue Code, 1966. Same was also dismissed by the authority.

5 The learned counsel for the defendant nos.1 and 2 submits that pursuant to the sale deed dated 19.4.2012 the defendants are in

possession of the suit property. Not only that except 9 Acre 33R remaining property is already disposed of by the defendants by registered sale deed in favour of remaining defendants. He submits that the Trial Court has not considered the fact that because of the revenue dispute raised by the plaintiffs, defendant nos. 1 and 2 stopped further payment of two cheques. He further submits that the Trial Court did not consider the fact that defendant nos. 1 and 2 were always ready and willing to pay remaining amount to the plaintiff. He further submits that if impugned order is not set aside, irreparable loss, harm and injury will be caused to them. He further submits that defendant nos.1 and 2 are ready and willing to deposit remaining amount with interest either in this court or in Trial Court if the order passed by the Trial Court is set aside. On the basis of these submissions, the learned counsel for the defendant nos.1 and 2 submits that the impugned order passed by Trial Court be set aside.

6 On the other hand, the learned counsel for the respondent nos.1 to 20 plaintiffs vehemently opposed the present Appeal from Order. He submits that as per the terms and conditions of the sale deed dated 19.4.2012 defendant nos.1 and 2 were supposed to pay entire remaining amount before creating any any third party right, title and interest. He further submits that as per averments made in paragraph 14 of the sale deed dated 19.4.2012, in case defendant nos.1 and 2 failed to make payment of full consideration, the sale deed be treated as cancelled. There is no dispute that the defendant nos.1 and 2 stopped payment of two cheques of Rs.19,96,000 and Rs.18,00,000/- dated 30.5.2012. He submits that these facts are considered by the

Trial Court at the time of passing impugned order dated 6.3.2014. Hence, there is no substance in the present Appeal from Order and same be dismissed with costs.

7 I have heard both the sides at length. In the present proceeding, defendant nos.1 and 2 purchased the suit property by registered sale deed dated 19.4.2012 for consideration of Rs.3,17,00,000/-. Out of that, defendant nos.1 and 2 made payment of Rs.2,79,04,000/- i.e. more than 90% amount. In the present proceeding, plaintiff raised objection before the revenue authority on 20.8.2012 for transferring the suit property in the name of defendant no.1 and 2. Hence, defendant nos.1 and 2 stopped the payment of further amount. Those objections were rejected by the Revenue Authorities. Considering the fact that defendant nos.1 and 2 paid consideration of more than 90% and that they stated they were ready and willing to pay remaining amount before the Trial Court, I am of the opinion that defendant nos.1 and 2 have made out a case for allowing Appeal from Order.

8 Hence, following order:

a) Order dated 6.5.2014 passed by the Trial Court below Exhibit 5 and application below Ex.5 of plaintiff in Special Civil Suit No.1285 of 2013 is set aside on the condition that appellant defendant nos.1 and 2 to deposit a sum of Rs.40,00,000/- with the Trial Court within four weeks from today.

b) If amount is deposited within stipulated time as stated hereinabove, Trial Court is directed to invest the said amount in Fixed Deposit of any nationalised bank initially for a period of one year and same be continued till the disposal of the suit.

c) Hearing of Special Civil Suit No. 1285 of 2013 is expedited.

d) It is made clear that subsequent transaction in respect of the suit property will be subject to outcome of the suit.

e) Appeal from Order is disposed of accordingly. In view thereof, Civil application does not survive. The same is also disposed of.

(K.K.TATED, J.)