

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 561 OF 2015  
WITH  
CIVIL APPLICATION NO. 927 OF 2015 IN A.O. NO. 561 OF 2015**

Sanjay Bishan Goel ... Appellant/Applicant

vs.

Ram Arjun Yadav & Anr. ... Respondents

Mr. S. Shamin i/b. M/s. Shamim & Co., Advocate for the  
appellant/applicant.

Mr. Manish Rai, Advocate for the respondents.

**CORAM: MRS.MRIDULA BHATKAR, J.**

**DATE : 15<sup>th</sup> September, 2015**

**P.C.:**

Admit. By consent, this Appeal is heard finally at the stage of admission.

2. This Appeal from Order is directed against the order dated 27<sup>th</sup> January, 2015 passed by the Civil Judge Senior Division, Panvel thereby dismissing the Application below Exhibit 5 in Special Civil Suit No. 240 of 2009 filed by the plaintiff/appellant for injunction against the defendants/respondents. The respondents/original defendant nos. 1 to 3 are the owner of the agricultural land. As per the case of the plaintiff/appellant, defendants agreed to sell their land to the plaintiff and therefore, on 17<sup>th</sup> January, 2007 the defendants issued a receipt which is called as Vachan Pavati in favour of the plaintiff about the transaction of

the said land. It was agreed between the parties that the land would be sold @Rs.15 lakhs per acre to the plaintiff for a total consideration of Rs.33,55,000/-. The amount of Rs.1,77,750/- was paid by the plaintiff to the defendants at the time of Vachan Pavati and it was agreed by the parties that the defendants/respondents shall take steps towards clearing the title, get it surveyed from the Government and the entire transaction was to be completed within three months from the date of Vachan Pavati. However, the defendants/respondents did not come forward to transfer the said land in favour of the plaintiff and did not fulfill the terms and promise given in Vachan Pavati, therefore, Special Civil Suit No. 240 of 2009 suit for specific performance was filed by the plaintiff/appellant against the defendants/respondents. In the said matter, the application for injunction was made, which was rejected.

3. The learned counsel for the appellant has submitted that the order passed by the learned trial Judge is to be set aside. The appellant has paid an amount of Rs.1,77,750/- to the respondents at the time of executing Vachan Pavati by the respondents. The learned counsel relied on the terms and conditions of Vachan Pavati wherein the respondents have to carry out the measurements, survey of the land so also he was supposed to enter into a sale deed in respect of the said land. The respondents did not take steps as agreed. He further submitted that

earlier the land stood in the name of their mother and defendants who are brothers, after the death of their mother, though it was necessary that the defendants to remove the name of the mother from the record of right, they did not take steps to remove the name of the mother. Due to this reason and as proper steps were not taken by the respondents, the cheque of Rs.5,33,250/- which was issued by the appellant was stopped. He further submitted that respondents ought to have communicated the appellant that the cheque was not honoured and the reason for the same. He further submitted that appellant sent a notice to the respondents on 16<sup>th</sup> January, 2008 and showed his willingness to perform his part and also expressed his readiness to pay the amount. He also called upon the respondents to make the title clear and marketable, however, the respondents did not reply to the said notice. Under such circumstances, the order passed by the learned Judge is illegal and the prayer of the appellant that the respondents be enjoined from creating any third party interest in the suit property ought to have been allowed.

4. The learned counsel for the respondents submitted that an amount of Rs.5,33,250/- which was given towards earnest money, however, it was dishonoured as there was error in writing the figures. He submitted that the respondents did pursue the appellant for payment of an amount and were ready to fulfill the contract. He further submitted that the notice

dated 16<sup>th</sup> January, 2008 was never received by the respondents. No acknowledgement to that effect was filed by the appellant in the suit. He further pointed out that if at all the respondents would not have carried out the survey, then as per the terms in Vachan Pavati, the appellant was given right to carry out survey and also to get the work done of his own, however, nothing was done for a long time. The appellant has no right in the suit land.

5. Heard the submissions. Perused the order dated 27<sup>th</sup> January, 2015 passed by the learned trial Judge. The fact that Vachan Pavati was entered by the respondents on 17<sup>th</sup> January, 2007 and the respondents have received Rs.1,77,750/- towards earnest money is not denied. This Vachan Pavati itself cannot be considered as an Agreement. It is not a registered agreement. It is just a promise to sell the land and acceptance of money. However, as per the terms of Vachan Pavati, the amount of earnest money mentioned is Rs.7,11,000/- and out of this earnest money, cheque of Rs.5,33,250/- was paid. The said cheque was bounced. Whatever reason may be, however, it was the duty of the appellant to pay the full earnest money of Rs.7,11,000/- at the time of execution of Vachan Pavati. I am of the view that no interest is created in favour of the appellant in respect of the said land. The view taken by the learned trial Judge is correct. It is rightly observed that steps were not taken by the

appellant for execution of Vachan Pavati within three months. Under such circumstances, as the appellant could not establish *prima facie* case or balance of inconvenience, the Appeal is dismissed.

6. In view of dismissal of Appeal, Civil Application does not survive and the same is accordingly disposed of.

**(MRS.MRIDULA BHATKAR, J.)**

**CERTIFICATE**

Certified to be true and correct copy of the original signed  
Judgment/Order.