

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

CIVIL APPLICATION NO.2836 OF 2012
IN
FIRST APPEAL NO.520 OF 2010

Gajendra baburao Gaigole ...Applicant

V/s.

Udhav Sadashiv Karanjkar & Ors. ...Respondents

Citi Financial Consumer Finance India Ltd. & Ors. ...Proposed
Respondents

Mr. S. A. Sawant for the Applicant.

Mr. C. M. Lokesh with Ms. Vibhavi S. Gole i/b. A. R. Bhole & Co. for
Respondent No.3.

Ms. Philip with Mr. Ajit Anekar i/b. Kochar & Co. for Respondent No.4.

Mr. Vikas Shivarkar for the Respondent Nos.5 and 6.

CORAM: K.K. TATED, J.
DATED : MARCH 25, 2015

PC. :

1. Heard the learned counsel for the parties. This Application is preferred by the Plaintiff for joining the proposed Respondent Nos.4 to 6 in the pending First Appeal.

2. The learned counsel for the Applicant submits that the Applicant Plaintiff filed Short Cause Suit No.153/2008 in the court of Civil Judge, Senior Division Pune for specific performance of agreement dated 20/05/2007 in respect of the suit property i.e. Flat No.A-2, Sahajivan CHS Ltd., Sy.No.R.M.4, G Block, MIDC, Chinchwad, Pune – 411019.

That suit was partly allowed by the Trial Court by judgment and decree dated 05/01/2010 directing the original Defendants to pay sum of Rs.6 lacs to the Plaintiff. Being aggrieved by the said decree, the Applicant preferred the present appeal. Same is admitted by this court.

3. The learned counsel for the Applicant submits that the Applicant preferred the present Civil Application for joining the proposed Respondents in the First Appeal on the ground that though an injunction order was passed on 19/08/2008 the original Defendant sold the suit flat to the proposed Respondent Nos.5 and 6 on 13/05/2008. He further submits that at the time of purchasing the said flat, Defendant No.5 and 6 taken loan from proposed Respondent No.4. As the proposed Respondent Nos.5 and 6 failed to repay the said loan amount, the proposed Respondent No.4, after following due process of law obtained an Award from the Arbitrator and filed execution proceedings. Thereafter, the proposed Respondent No.4 assigned their right, title and interest in respect of the Award passed by an Arbitrator in favour of Phoenix ARC Pvt. Ltd. The learned counsel for the Applicant submits that in view of these facts, it is necessary to bring subsequent purchasers of the suit flat on record in the present appeal. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant to bring the proposed Respondents as Respondents in the appeal.

4. On the other hand, the learned counsel for the proposed Respondent No.4 vehemently opposed the present Civil Application. They filed their Affidavit-in-Reply dated 11/07/2014. It is the case of

the proposed Respondent No.4 that during pendency of the present proceedings, they assigned their right, title and interest in respect of the award passed by an Arbitrator in favour of the Phoenix ARC Pvt. Ltd. pertaining to the suit flat. In support of this contention, the learned counsel for the proposed Respondent No.4 relies on a deed of assignment receivable with the underlined security dated 18/07/2012. She submits that in view of the subsequent development, they are not necessary party in the present proceedings. Hence, Civil Application be dismissed with costs, against them.

5. The learned counsel for the proposed Respondent Nos.5 and 6 vehemently opposed the present Civil Application. He submits that they purchased the suit property from Defendant No.1 on 13/05/2008 with bona fide intention. He submits that as the Applicant failed and neglected to comply with the terms and conditions of agreement of sale dated 20/05/2007, the Respondent No.1 U. S. Karanjkar terminated the said agreement for sale dated 20/05/2007. Thereafter they purchased suit flat. He submits that the Respondent Nos.5 and 6 being bona fide purchasers, it is not necessary to join them as party in the present proceedings. In support of this contention, he relies on the judgments in the matter of *Radhakrushna Choudhury Vs. Radhakrushna Mohaprabhu and Anr.* 1971 Orissa 274, *Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Anr.* 2004 (1) SCC 191 and *Sanjay Verma Vs. Manik Roy and Ors.* 2006 (13) SCC 608 and section 19B of the Specific Relief Act, 1963. Hence, there is no substance in the present Civil Application and same to be dismissed with costs.

6. Heard both sides at length. It is to be noted that in the present proceedings, the Applicant Plaintiff filed Special Civil Suit No.153/2008 for specific performance of agreement dated 20/08/2007 against Defendant Nos.1 to 3. It is to be noted that in the present proceedings, before passing an injunction order dated 19/08/2008 by the Trial Court, the original Defendant No.1 sold suit property in favour of the proposed Respondent Nos.5 and 6 on 13/05/2008. Same was purchased by the proposed Respondent Nos.5 and 6 by taking loan from proposed Respondent No.4. Though the proposed Respondent Nos.5 and 6 purchased the suit property on 13/05/2008, those facts were not disclosed by original Defendant No.1 during pendency of the suit.

7. The present proceedings is for specific performance of an agreement dated 20/08/2007 between the Plaintiff and Defendants in respect of the suit property. Considering these facts, I am of the opinion that the proposed Respondent Nos.4, 5 and 6 are necessary parties in the present proceedings. The case law cited by the Respondent Nos.5 and 6 are not applicable in the present proceedings. Hence, the Civil Application is allowed in terms of prayer clause (a) which reads thus:

(a) This Hon'ble Court be pleased to add the proposed Respondent Nos.4 to 6 i.e. M/s. Citi Financial Consumer Finance India Ltd. and Rahul Bajrang Shinde and Bandu Bajrang Shinde as necessary party Respondents to the First Appeal No.520/2010.

(b) Interim protection granted by this court on 18/10/2012 to continue for 8 weeks from today.

- (c) Liberty granted to the Applicant to prefer an appropriate Application for remaining prayer clauses, which will be decided on its own merits.
- (d) Amendment to be carried out within four weeks from today.
- (e) After carrying out amendment in the appeal, the Appellant is directed to serve an amended copy of the first appeal along with annexures on the added Respondent within three weeks thereafter.
- (f) Civil application stands disposed of accordingly.

(K.K. TATED, J.)