

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

CIVIL APPLICATION NO.3434 OF 2012  
IN  
FIRST APPEAL NO.1468 OF 2012

Ishwarsinh M.Solanki. ..Applicant.

vs.

M.B.Parmar. ..Respondent.

Ms. Prabha Badadare for the Applicant.

Mrs. Bhawana Anklesaria for the respondent.

**CORAM : K.K.TATED, J.**

**DATE : 23/1/2015**

PC:

Heard learned Counsel for the parties.

2) This application is preferred by the plaintiff for quashing and setting aside the impugned judgment and decree dated 3/8/2012 passed by the learned Civil Judge,S.D., Dadra and Nagar Haveli at Silvassa in Special Civil Suit No.24 of 2007 and also for injunction restraining the respondent from disturbing his peaceful possession in respect of the suit property i.e. land bearing Survey No.153/P area 2.07 hectares situated at Village Naroли of Dadra and Nagar Havel. In the present proceedings the applicant initially filed Civil Suit No.27 of 2007 in the Court of Civil Judge,S.D. of Dadra Nagar Haveli at Silvassa for

specific performance of agreement dated 27/10/1989. The applicant made following prayers in that suit.

“i) That suit may be decreed for the specific performance of a contract for executing the sale deed at the cost of the plaintiff and in favour of the plaintiff by the defendant of the suit land and the defendant may also be directed to obtain sale permission for the same from the competent authority prior to execute the sale deed and if the defendant fails to obtain the sale permission and to execute the sale deed, an order may be passed for obtaining the sale permission for the suit land by the Registrar of the Court from the competent authority and then after the Registrar of the Court may also be directed to execute the sale deed at the cost of the plaintiff and in favour of the plaintiff.

ii) If alternative of the prayer, by a decree the defendant may be ordered to pay to the plaintiff a sum of Rs.25,87,500/- (Rupees Twenty Five Lakhs Eighty Seven Thousand Five Hundred only) as damages including principal amount.

iii) In case of passing decree for the damages an accrued interest on the damages amount from the date of filing of this suit till it is fully recovered may be awarded to the plaintiff at the reasonable rate of interest as the Hon'ble Court may deem fit.

iv) Any other relief or reliefs that the Hon'ble Court may deem fit in the circumstances of the case, may be granted in favour of the plaintiff and against the defendant”.

- 3) In that suit the applicant-plaintiff has not filed any application for injunction restraining the respondent from disturbing his possession in respect of the suit property.
- 4) The Trial Court also dismissed the another suit filed by the applicant-plaintiff for specific performance of agreement.
- 5) It is to be noted that the respondent defendant also filed RCS NO.20 of 2004 in the Court of Civil Judge, S.D., Silvassa for injunction restraining the applicant from disturbing peaceful possession of the respondent.
- 6) The learned Counsel appearing for the applicant submits that the applicant is in possession of the suit property for last several years and that may be protected till the hearing and final disposal of the appeal.
- 7) On the other hand, learned Counsel appearing on behalf of the respondent vehemently opposed the prayer. She submits that the Trial Court held that the agreement for sale placed on record in the matter is forged document. She submits that the Trial Court decreed the suit filed by the respondent and restrained the applicant from disturbing his possession. She further submits that in the present first appeal this Court has not granted any stay to the Judgment and decree passed by the Trial Court. She further submits that as on today the respondent is in possession of the suit property and therefore, the civil application should be dismissed with costs.

8) I heard both the parties. It is to be noted that the applicant has not made any prayer for injunction restraining respondents from disturbing his possession of suit property in his Special Civil Suit No.24 of 2007 in the Trial Court. Even the decree passed by the Trial Court on 6/8/2012, this Court has not stayed the same. Considering these facts, I am of the opinion that the applicant has not made out any case at present for allowing this civil application.

9) Hence, civil application stands rejected.

10) No order as to costs.

**(K.K. TATED, J.)**