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

**APPEAL FROM ORDER (L) NO. 25581 OF 2015
WITH
CIVIL APPLICATION (L) NO. 25582 OF 2015
IN
APPEAL FROM ORDER (L) NO. 25581 OF 2015**

Vikas Gangaram Ayare & 2 Ors.

...Appellants

Vs.

Smt. Vijaya Shantaram Sawant

...Respondents

Mr. Mayur Khandeparkar a/w. Ms. Shweta I. Singh for Appellant

Mr. Atul S. Tungare i/b. Mr. Kaustubh N. Marate

for the Respondent No.s 1 to 6

Mr. A.R. Shaikh i/b. ASD Associates for Respondent No.7

CORAM : MRS. ROSHAN DALVI, J.

DATED : 19TH OCTOBER, 2015

P.C. :

Rule. Returnable forthwith.

1. The appellant / plaintiff has sued for specific performance of an agreement dated 4th May, 1994 and an agreement dated 1st April, 1995. Both the agreements are in respect of a plot of land for which the plaintiff made a lump-sum payment of Rs.50,000/-. The plot of land was shown to be 40x35 ft in area in the agreement of 1994 without mentioning the actual area of the plot. The later agreement showed the actual area of the property in sq. meters. The

property is 126 sq. mtrs in area. The agreements which are to be specifically performed show no obligation of the vendors remaining to be called upon to perform. The agreements show only the declarations and covenants of the agreement, the fact that the entire consideration is paid and that the possession is handed over leaving nothing to perform.

2. Counsel on behalf of the plaintiff would contend that in 1995 agreement the vendors had to execute the irrevocable power of attorney. The execution of the irrevocable power of attorney would not convey the property. He would also claim that the vendors had to sign necessary agreements as and when required. This would also not convey the property. He further showed that under the agreement the vendors declared that they have no objection to transfer the plot of land to the names of the proprietor. This is only a declaration and not an obligation to transfer which they had no objection to do. The agreement would further show that pocket expenses and charges incidental to the agreements and conveyance to be executed would be borne by the purchasers. This clause also would not show the obligation to convey.
3. Rightly therefore, for a period of 2 decades the appellant did not call upon the defendants, who are the vendors, to convey the property to the plaintiff.

4. The plaintiff claims to be in possession. He claims to have put up six structures. He has shown his possession by 3 ration cards and 3 electricity bills. It is not known whether these documents are in respect of 3 or 6 structures and whether for the structures for which there is an electricity bills there are no ration cards and the structures for which there are ration cards there are no electricity bills! The occupants of the structure who applied for ration-cards would pay the electricity bills and the occupants who pay electricity bills would apply for a ration-card. The ration-cards are for Kholi Nos. 1, 2 and 3 in Janki Niwas. The electricity bills are for house Nos.1 (Janki Niwas) 2 and 3 in Janki Niwas. Hence the ration-cards and electricity bills are for the same structures and at best there are three structures and not six as made out by the plaintiff.
5. The plot of land is at or near a slum. A slum declaration was made. That declaration has been set aside. The slum rehabilitation scheme was made. The rehabilitation was challenged. The order has been set aside and the matter has been remanded. It would be again heard by the relevant authority. The plaintiff's rights to the three structures would be considered.
6. In the suit for specific performance the plaintiff claims to have demanded specific performance on 11th May 2012

under his Advocate's notice of that date. The notice shows the agreement for sale under which the defendants are stated to have not only agreed to sell but sold, transferred and assigned all their rights, title and interest in the suit plot of land to the plaintiff. It shows that the plaintiff has six structures, 3 residential and 3 commercial. It refers to the last agreement of 1st April, 1995 and calls upon the defendants not to execute the sale deed, but to admit execution and to register the agreement for sale itself. Hence there is no notice of demand to sell the plot agreed to be sold to the plaintiff.

7. The agreement of 1994 and 1995 have remained at large. After the first notice of 2012 the suit is filed in 2013.
8. The learned Judge has considered the delay in suing for specific performance. The learned Judge has also observed that in fact the suit is for declaration. The suit is for a declaration that the agreement is valid and subsisting and for specific performance and in the alternative that the decree passed by the Court declaring the agreement as valid and subsisting and directing specific performance would be deemed to be a conveyance. There is no prayer also for execution of any conveyance. There cannot be because there was no obligation to convey.

9. In the period between the execution of the agreements for which the aforesaid declaration is sought by the plaintiff and the filing of the suit, the defendant Nos. 1 to 6 have entered into an agreement with defendant No.7 which is challenged and for which the plaintiff has called for the mandatory injunction of depositing their original agreement for cancellation in the suit.
10. Upon such reliefs the interim application is taken out for the reliefs of injunction against creation of third party rights and interference with the plaintiff's possession without filing due legal process.
11. The very agreements have been challenged as fabricated documents.
12. In such a suit in respect of documents two decades old, for specific performance without any obligation to convey, which are challenged and during the period in which third party rights are created the learned Judge has refused interim relief.
13. The learned Judge in the impugned order has considered that the plaintiff's case is upon agreements with defendant Nos. 1 to 6 executed in 1994 with admittedly no

sale deed in favour of the plaintiff but for declaration that the agreements are valid and subsisting and upon a notice directly given in the year 2012 by the plaintiff. The learned Judge has also considered that the plaintiff has knocked on the door of the Court at the very delayed stage after considerably long time. The learned Judge is correct. The order is correct. The plaintiff cannot be given any interim relief.

14. The appeal is dismissed. Civil Application is accordingly disposed off.
15. The original documents being three electricity bills, three ration-cards and two agreements produced by the plaintiff are returned to the plaintiff.

(ROSHAN DALVI, J.)

CERTIFICATE

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