

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

**CIVIL APPLICATION NO. 4621 OF 2010
IN
FIRST APPEAL NO. 1831 OF 2010**

Shri. Subhash Tippanna Nelge ... Applicant

V/s.

Shri. Shantaram Shankar Gavde & Ors. ... Respondents

Mr. Pratap Mahadik i/b P.S. Dani for the applicant.

Mr. G.S. Godbole i/b A.B. Tajane for the respondent nos. 1 to 4.

**CORAM : K. K. TATED, J.
DATED : 16/01/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by original plaintiff for restraining respondent original defendants from creating any third party right, title and interest in respect of the suit property i.e. land admeasuring 1 Hector 78 R from Gat No. 131 situated at Mouje Dhanore, Taluka Khed, District Pune.

3 It is the case of the applicant, plaintiff that by Agreement for Sale

dated 13.04.1993, the respondents original defendants agreed to sell the suit property to the applicant for a sum of Rs. 8,90,000/-. The learned Counsel for the applicant submits that as per Terms and Conditions of Agreement for Sale, the respondents original defendants were supposed to carry out measurement through Government Agency and demarcate the boundary of the suit property. He further submits that as per Agreement for Sale, the respondents were supposed to execute sale deed in favour of the applicant within 11 months from the date of the Agreement for Sale after complying with the terms and conditions as stated in clause 2(a). He further submits that though the time limit was fixed in the said Agreement for Sale, the respondents accepted sum of Rs. 1,30,000/- after expiry of 11 months from the date of Agreement for Sale i.e. Rs.10,000/- on 20.10.1994, Rs.50,000/- on 05.04.1995, Rs.50,000/- on 05.04.1995, Rs.10,000/- on 28.05.1995 and Rs.10,000/- on 16.06.1995. He further submits that the respondents failed and neglected to execute the sale deed. Hence, the applicant filed Special Civil Suit No. 983 of 1997 in the Court of Additional Small Causes Court at Pune for specific performance of the Agreement for Sale. He submits that the Trial Court by judgment and decree dated 13.09.2010 partly allowed the suit filed by the applicant directing respondents original defendants to refund the sum of Rs.

5,10,600/- along with interest @ 8%.

4 The learned counsel for the applicant further submits that Trial Court refusing the decree for specific performance of agreement only on the ground that applicant failed and neglected to show his readiness and willingness to perform his part as per Agreement for Sale dated 13.04.1993. He further submits that the Trial Court failed to consider the fact that the applicant in the plaint in paragraph 8 specifically stated that the applicant was always ready and willing to perform his part of the agreement for sale.

5 The learned counsel for the applicant further submits that during the pendency of Special Civil Suit No. 983 of 1997, he has preferred application below Exh.5 for injunction restraining respondents from creating third party right, title and interest in respect of the suit property. He submits that in that application below Ex.5 the Trial Court passed order on 12.07.2002 restraining respondents from creating third party right, title and interest in respect of the suit property. He further submits that the present First Appeal is admitted by this court on 21.11.2011. He submits that this Court granted ad-interim relief in terms of prayer clause (a) by order dated 21.11.2011.

That order was extended from time-to-time till 01.02.2013. He further submits that during the pendency of the present First Appeal, the respondents may be restrained by order of injunction from creating any third party right, title and interest in respect of the suit property. He submits that if the respondents create any third party right, title and interest in the suit property, then nothing will survive in the First Appeal. Therefore, in the interest of justice, this Hon'ble Court be pleased to allow the present Civil Application in terms of prayer clause (a).

6 On the other hand, the learned counsel Mr. Girish Godbole appearing on behalf of respondents vehemently opposed the present Civil Application. The respondents filed their affidavit-in-reply dated 16.08.2012. The learned counsel for the respondents submits that in the present proceeding the applicant issued notice dated 28.08.1996 calling upon the respondents to comply with the Agreement for Sale dated 13.04.1993. He submits that as per Agreement for Sale, the sale deed was supposed to be executed within 11 months i.e. on or before 04.02.1994. He submits that applicant never called upon the respondents to execute the Sale deed within stipulated time. He further submits that after issuing notice dated 28.08.1996, the

applicant has filed Special Civil Suit for Specific performance of the Agreement for Sale. He submits that the Trial Court considered the evidence on record and held that applicant failed and neglected to show his readiness and willingness to comply the Agreement for Sale date 13.04.1993. He further submits that as per Agreement for Sale dated 13.04.1993 the respondents executed the Power of Attorney in favour of applicants. In spite of that, the applicants failed and neglected to carry out appropriate measurement through the Government Agency.

7 The learned counsel for the respondents submits that the applicant has suppressed the material fact from the Trial Court as well as this court about execution of power of attorney in his favour. Not only that, during the pendency of the suit one Mr. Puthen Puryyn Easo Roy, the third party filed application under Order 1 Rule 10 of C.P.C. for joining him as a party defendant in Special Civil Suit No. 983 of 1997. He submits that third party specifically stated in the application that applicant offered to sell 1 Hector of land out of the suit property in his favour. The applicants also taken sum of Rs.1,00,000/- from third party. Therefore, there is no question of granting any injunction in favour of the applicant restraining respondents from creating any third

party right, title and interest in respect of the suit property. On the basis of these facts, the learned Counsel for the respondents submits that there is no substance in the present Civil Application and same to be dismissed with costs.

8 I heard both the sides at length. It is to be noted that admittedly as per Agreement for Sale dated 13.04.1993, the respondents original defendants agreed to sell the suit property to the applicant for a sum of Rs.8,90,000/- out of that the respondents accepted Rs.5,10,600/-. The Respondents also accepted Rs.1,30,000/- after 04.02.1994 i.e. date before which the respondents were supposed to execute Sale Deed in favour of applicant. The Trial Court has rejected applicant's prayer for Specific performance of Agreement for Sale only on the ground that applicant failed and neglected to show his readiness and willingness to comply with the terms and conditions of Agreement for Sale. The Trial Court further held that the applicant has not made any averments in the plaint to that effect. It is to be noted that applicants specifically stated in paragraph 8 of the plaint that he is always ready and willing to comply the terms and conditions of Agreement for sale. Considering this fact that applicant has already paid more than 60% of the amount to the respondents and showed his willingness to pay the remaining

amount. In spite of that the Trial Court dismissed the applicant's suit for specific performance. I am of the opinion that the applicant has made out case for allowing the Civil Application. If the Civil Application is not allowed and in the meanwhile, respondents create third party right, title and interest in the suit property, then nothing will survive in the present First Appeal.

9 Hence, the following order.

i) Civil Application is allowed in terms of prayer clause (a)

which reads thus:

“a) Pending the hearing and final disposal of the present Appeal the Respondents, their agents, servants, contractors and/or any other person(s) claiming through them be restrained by an order of injunction from transferring, alienating and/or parting with and/or from creating any charge and/or from dealing with and/or from creating any interest in favour of any third party in respect of the suit property in any manner whatsoever.”

ii) Civil Application is disposed of accordingly.

10 At this stage, the learned counsel for the respondents makes oral request to stay the operation and implementation of this order for eight weeks. He further submits that respondents are ready and willing to make the statement before this court that for 8 weeks they will not

create any third party right, title and interest in respect of the suit property.

11 Considering the submissions made by the learned counsel for the respondents and fact of the present case, the oral request is rejected.

(K.K.TATED, J.)