

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 1186 OF 2014
WITH
CIVIL APPLICATION NO. 1433 OF 2014 IN A.O. NO. 1186 OF 2014
a/w.
APPEAL FROM ORDER NO. 169 OF 2015
WITH
CIVIL APPLICATION NO. 213 OF 2015 IN A.O. NO. 169 OF 2015**

M/s. Cornice Reality Pvt. Ltd. ... Appellant/Applicant
Vs.

M/s. Pragati Developers, through
its partners Jakir Majeed Hoble & Anr. ... Respondents

Mr. Sanjay D. Thokade, Advocate for the appellant/applicant in both the matters.

Mr. R.A. Thorat, Senior Advocate i/b. Mr. P.B. Gujar, Advocate for the respondents.

**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : 26th October, 2015**

P.C.:

The appellant has filed these two appeals directing against the orders dated 5th August, 2014 passed by 2nd Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune in two suits, i.e., Special Civil Suit No. 475 of 2014 and 474 of 2014. The appellant is the original defendant in both the suits. The respondents/plaintiffs have filed the suit for specific performance against the appellant for cancellation of two sale deeds of two lands owned by the respondents/plaintiffs. The original plaintiffs/respondents sold the land of lands of 12R for Rs.2,46,00,000/- and another land of 10R for

Rs.1,05,00,000/- by a sale deed dated 15th October, 2013 from Village Punawale within the jurisdiction of Pimpri Chinchwad Municipal Corporation. Pursuant to the sale deeds, the appellant/defendant paid Rs.33,00,000/- towards first sale deed and Rs.25,00,000/- towards second sale deed. Thus, the appellant paid total Rs.58,00,000/- towards the sale deeds. An amount of Rs.2,93,00,000/- is due. Pursuant to the sale deeds and payment of Rs.58,00,000/-, possession of the suit lands were handed over to the appellant by the respondents/original plaintiffs. However, though the purchaser/appellant was supposed to pay the entire amount, the cheques could not be honoured, as the appellant issued stop payment instructions to the bank. Thus, as on today, possession of lands is with the appellant. The appellant has paid only Rs.58,00,000/- and amount of Rs.2,93,00,000/- is due. The respondents have, therefore, filed suits for cancellation of sale deeds and demanded their land back. The learned trial Judge while hearing injunction application (Exhibit 5), directed the appellant/defendant not to create third party interest until the final disposal of the suit. Being aggrieved by the said orders, the appellant/defendant have filed this Appeal from Order.

2. The learned counsel for the appellant submitted that the appellant has purchased the property, as the respondents/original plaintiffs gave an impression that they are having clear title over the lands and they are the

only exclusive owner of the said property. Therefore, the appellant showed interest and agreed to purchase the said property. He submitted that a public notice was issued on 25th July, 2013, however, thereafter on 31st July, 2013, a notice was sent through Advocate Rishikesh Gaikwad by Tukaram Bahurao Bhujbal & family who claims to be co-sharers in the said land. The appellant, thereafter, filed Special Civil Suit No. 1634 of 2013 pending in the Court of Civil Judge Senior Division, Pune for partition and another Suit No. 1119 of 2015 is filed by another co-sharer Sunil Gopal Bhujbal claiming partition and cancellation of sale deed. The learned counsel submitted that the respondents were fully aware of this notice and yet they entered into transaction keeping the appellant in dark. At present, the appellant wants to develop the land and wants to create third party interest by selling the same, therefore, this order is to be vacated. He further relied on Section 55 of Transfer of Property Act. He submitted that it is the duty of the seller to disclose any liability or any encumbrance on the property which the respondents failed to do and therefore, the order passed by the learned Civil Judge Senior Division, Pune be vacated.

3. The learned senior counsel for the respondents/original plaintiffs while opposing this two Appeals has submitted that the plaintiffs/respondents have taken precaution to give public notice on 25th

July, 2013, however, no objection was raised by any party. He submitted that the co-sharers who have filed the suits against the respondents/original plaintiffs will be contested by them in due course of time. He further submitted that the lands which is sold to the appellant is total 22R and the respondents/original plaintiffs has total share more than 22R in the land in which two suits for partition are filed by co-sharers of the respondents. He further submitted that the respondents are ready to pay off Rs.58,00,000/- along with interest accrued thereon, however, the land which is in possession is to be returned to them. He supported the order passed by the learned trial Judge.

4. Heard the submissions of both the counsel. A notice was sent to the respondents/original plaintiffs on 31st July, 2013 by their co-sharers. Undoubtedly, it is the duty of the respondents/plaintiffs to disclose this fact to the appellant/defendant. This shows that the respondents/plaintiffs *prima facie* has deviated from their duty as a seller. However, in the present transaction, the respondents have received Rs.58 lakhs and gave possession of the entire land, i.e., 22R to the appellant and still an amount of Rs.2,93,000/- is due from the appellant to them. Thus, a major portion of consideration is not yet paid. Whether the instruction given by the appellant of stoppage of payment after having the possession can be justified or not, that will be a matter of appreciation of evidence.

However, as on today, the property is with the appellant who wants to develop the said property and also intend to create third party right in the said property. This definitely will lead to multiplicity of litigations if third party right is created in the said property. Two suits are already filed by the co-sharers and are pending before the learned Civil Judge Senior Division, Pune. Under such circumstances, the order passed by the learned Additional Judge of Small Causes Court and Joint Civil Judge Senior Division, Pune cannot be faulted with. I maintain the said order with a direction that the learned Judge may endeavour to complete the trial within 18 months from today. The respondents shall not disturb the possession of the appellant till then.

5. Appeals from Order are dismissed.

(MRS.MRIDULA BHATKAR, J.)