

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

**APPEAL FROM ORDER NO. 1182 OF 2014
WITH
CIVIL APPLICATION NO. 1428 OF 2014**

Smt. Shantidevi Rammurat Dubey & Ors. ... Appellants
V/s.

Shaymdhar Rajnarayan Dubey & Ors. ... Respondents

Mr. Rakesh Agrawal for the appellant.
Mr. Gaurav Parkar for the respondent no.3.

**CORAM : K. K. TATED, J.
DATED : 13/07/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 The learned counsel for the appellant makes a statement that as on today he is not pressing any relief against unserved respondents i.e. respondent nos. 1,2, 4 & 5. Statement is accepted.

3 This Appeal from Order is preferred by plaintiffs challenging the order dated 15.11.2014 passed by Civil Judge, Senior Division, Panvel below Exh.5 in S.C. Suit No. 540 of 2012 under Order 39 Rule 1 & 2 of C.P.C. restraining the respondents defendants from acting on the basis of Sale Deeds dated 20.12.1995 and 05.08.1998 alongwith Consent Terms dated 14.09.2006 in Regular Civil Suit No. 51 of 2001.

4 In the present proceeding, the legal heirs of one Mr. Rammurat Sheetal Dubey filed Special Civil Suit no. 540 of 2012 for declaration that Sale Deeds dated 20.12.1995 and 05.08.1998 executed by the

deceased Rammurat Dubey in favour of defendant no.3 was obtained by him by fraud and therefore, that is not binding on them. It is the case of the plaintiffs that even the Consent Terms dated 14.09.2006 in Regular Civil Suit No. 51 of 2001 was obtained by defendant no.3 by fraud and therefore, the same to be set aside.

5 It is to be noted that in the present proceeding, the deceased Rammurat Dubey executed both the Sale Deeds in favour of the defendants and sold his 50% share in suit property from old Survey no. 66 Hissa No. 1C/5 and old survey no. 67-A1/2B situated at Mouje Mumdapur Taluka District Raigad.

6 The Trial Court considering the evidence on record held that the plaintiffs have filed suit after 17 years to set aside the registered Sale deeds in favour of defendants. Rejected plaintiffs' application below Exh. 5 under Order 39 Rule 1 & 2 of the C.P.C. Hence, the present, Appeal from Order.

7 The learned Counsel Mr. Agrawal appearing on behalf of plaintiffs submits that the Trial Court erred in coming to the conclusion that there is a delay on the part of the plaintiffs to file the suit as well as application for injunction restraining the defendants from creating third party rights, title and interest in respect of suit property. He submits that as soon as the plaintiffs learnt about the fraud committed by the defendants, they immediately filed the present proceeding. He further submits that though his father Rammurat Dubey expired on 17.04.1998, the Sale Deed dated 05.08.1998 executed by the defendants on the basis of power of attorney. He further submits that

even, on the basis of declaration dated 18.11.1981 and Deed of Settlement dated 14.09.1986 as a legal heirs, they are entitled to 50% in a suit property. He submits that even in Consent Decree dated 14.09.2006, it was specifically stated that the present plaintiffs were necessary party. These facts are not considered by the Trial Court at the time of rejecting their application under Order 39 Rule 1 and 2 of the C.P.C.

8 The learned Counsel for the plaintiffs submits that during the pendency of the present proceeding, if the respondents defendants created third party rights, title and interest in respect of suit property, then irreparable loss and injury will be caused to them. He submits that in the interest of justice, this Honourable Court be pleased to restrain the defendants from creating any third party rights, title and interest in respect of suit property till the hearing and final disposal of Special Civil Suit no. 540 of 2012.

9 On the other hand, the learned Counsel Mr. Parkar appearing on behalf of respondent/defendant no.3 vehemently opposed the present Appeal from Order. He submits that by registered Sale Deed dated 20.12.1995 and 05.08.1998 the predecessor of the plaintiffs transferred the suit property in his favour. He submits that plaintiffs have filed the suit after more than 17 years. He submits that these facts are considered by the Trial Court and held that at present plaintiffs are not entitled to any interim and /or ad-interim relief as per Order 39 Rule 1 and 2 of C.P.C. He submits that there is no substance in the present Appeal from Order and same to be dismissed with costs.

10 I heard both the sides at length. Admittedly, in the present proceeding, the predecessor of the plaintiffs transferred his rights of the suit property in favour of the defendants by registered Sale Deeds dated 20.12.1995 and 05.08.1998. The same were challenged by the plaintiffs after more than 17 years on the ground of fraud, misrepresentation etc. It is to be noted that to prove fraud and whether the defendants committed any fraud at the time of obtaining registered Sale deeds dated 20.12.1995 and 05.08.1998, it requires to lead evidence before the Trial Court. Not only that, present proceeding instituted by the plaintiffs after more than 17 years.

11 Considering these facts and reasons given by the Trial Court in paragraphs 12 & 13 of the impugned order, I am of the opinion that plaintiffs have not made out any case for interfering the well reasoned order dated 15.11.2014.

12 Hence, the following order is passed:

ORDER

- a) Appeal from Order stands dismissed.
- b) Considering the dispute between both the parties, hearing of Special Civil Suit no. 540 of 2012 is expedited.
- c) In view of dismissal of the Appeal from Order, nothing survives in the Civil Application. Hence, same is dismissed as infructuous.

(K.K.TATED, J.)