

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO.64 OF 2013

1. Pralhad s/o Shankarrao Rajkuntwar,
Age 55 years, Occu. Agri & Business
2. Namdeo Janardhan Rajkuntwar,
Age 57 years, Occu.
R/o Mukhed, District Nanded ..Appellants

Versus

1. Ashok Kachru Rodge,
Age 36 years, Occu. Agri & Service,
R/o Umerdari, Taluka Mukhed,
District Nanded
2. Vyankat Manikrao Bhosale (Subhedar),
Age 43 years, Occu. Agriculture,
R/o Shivajinagar, Mukhed,
District Nanded
3. Bramhanand Dajirao Patil (died),
by L.Rs.
- 3/1 Jayashri Dajirao Patil,
Age 49 years, Occu. Household,
R/o Taluka Mukhed,
District Nanded
- 3/2 Pranav Bramhanand Patil,
Age Major, Occu. Student,
R/o as above
- 3/3 Prerna Bramhanand Patil,
Age Major, Occu. Student,
R/o as above ..Respondents

Mr Vivek Bhavthankar, Advocate for appellants
Mr A.S. Shivpuje, Advocate for respondent No.1
Mr U.B. Bilolikar, Advocate for respondents 2 and 3

CORAM : V.K. JADHAV, J.

DATE : 7th July 2016

PER COURT

Heard finally with the consent.

2. Being aggrieved by the order dated 7.5.2013, passed below Exh.5 in Special Civil Suit No.04 of 2013 by I/c Civil Judge, Senior Division, Link Court Mukhed sitting at Kandhar, the original plaintiffs have preferred this appeal.

3. Brief facts giving rise to the present appeal are as under :

4. According to the appellants-plaintiffs, the defendant No.1 is the original owner of land Survey No.52/B admeasuring 1 hectare, 60 Aar, situated at Mukhed and the said suit land is bifurcated in two parts due to Mukhed-Barhali road. In the year 2009, the defendant No.1 was in need of money. Consequently, the appellants-plaintiffs had agreed to purchase the said suit land and in view of the talks of settlement, the defendant No.1 had executed agreement to sell on 1.11.2009 by accepting the earnest money of Rs.5,05,001/- and even, the defendant No.1 executed separate receipt of the same before the witness. According to the plaintiffs, the defendant No.1 even handed over the possession of the suit land and the same is also mentioned in the agreement. However, the prices of the land risen within four years and consequently, the defendant No.1 had executed the sale-deed in favour of defendants No.2 and 3 on 5.3.2013, however, the possession of the land under the agreement remained with the plaintiffs. The plaintiffs, therefore, constrained to institute suit for specific performance of contract and decree for perpetual injunction. Plaintiffs had also filed an application Exh.5 for issuance of injunction under Order 39, Rule 1 and 2 of the Code of Civil Procedure. The defendant no.1 has strongly resisted the application as well as the suit by filing written statement/say at Exh.24. It has contended that agreement is not registered as per Section 17 of the Registration Act.

It has further contended that the possession was never handed over to the plaintiffs. It is the case of defendant No.1 that the agreement, if any as per its contents came to an end on 30.4.2010, as the time was essence of the contract. The defendant No.2 and 3 also resisted the claim on the ground that they are the *bona fide* purchasers without due notice.

5. The learned Judge of the trial Court, after considering the rival contentions of the parties, rejected the application Exh.5. Being aggrieved by the same, the original plaintiffs has preferred this appeal.

6. The learned Counsel for the appellants submits that this Court, by order dated 9.7.2013 directed the parties to maintain *status quo* as to the suit property, as available on the date of passing of the order. The learned Counsel submits that by maintaining the same order as it is, the trial Court may be directed to expedite the hearing of the suit and accordingly, this appeal can be disposed of.

7. The learned Counsel for the respondents - original defendants No.2 and 3 submits that defendants No.2 and 3 are in possession of the suit property and, therefore, even by directing the parties to maintain the *status quo*, their possession will be protected. The learned Counsel for the appellants - original plaintiffs submits that the position, as it was existed on 9.7.2013 by maintaining the same, this appeal can be disposed of by giving directions to the trial Court to expedite the hearing of the suit.

8. In view of the above submissions, without going into merits, the trial Court can be directed to expedite the hearing of the suit by directing the parties to maintain *status quo* as on the date of passing of order i.e. 9.7.2016 till disposal of the suit. Hence, the following order:

ORDER

(I) The Civil Judge, Senior Division, Llink Court, Mukhed sitting at Kandhar is hereby directed to dispose of the Special Civil Suit No.4 of 2013 (Pralhad and ors. Vs. Ashok and ors.) expeditiously, preferably within a period of six months from the date of framing of the issues.

(II) The parties shall maintain *status quo* in respect of the suit property, as on the date of passing of the order i.e. 9.7.2016 till disposal of the suit.

(III) The appeal is accordingly disposed of. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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