IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NOS. 24/2016 AND 25/2016

SMT. KALAWANTI S. ADVANI REP. IN THIS SUIT BY HER ATT. SMT. KARISHMA MAHTANI AND ANR., ... Appellants

Versus

M/S SATCHI DEVELOPMENT COMPANY PVT. LTD. AND 4 ORS., ... Respondents

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Shri Ajit R. Kantak with Ms. Rajas Kantak, Advocates for the Appellants.

Shri Rohan P. Dessai, Advocate for Respondent Nos. 1,2,3 and 4.

Shri Yogesh V. Nadkarni with Ms. Divya Shirgam, Advocates for Respondent No. 5.

CORAM:- C. V. BHADANG, J.

DATED:- 1st DECEMBER, 2016

ORAL ORDER:

Both these appeals involve common questions of law and fact and they can be conveniently disposed of by this common order.

2. The appellants are the original plaintiffs, while the respondents are the original defendants. The appellants have

filed Special Civil Suit No. 44/2011/A and 45/2011/A, which are pending before the learned Senior Civil Judge at Panaji. The suits are filed for the relief of declaration, cancellation of sale deed, injunction and for consequential reliefs.

3. The case made out in the plaint in brief is that respondent no. 3, who is the son of appellant no. 1 and the brother of appellant no. 2, has executed sale deeds in respect of two properties belonging to appellant no. 1 on the strength of two separate power of attorneys dated 08.11.2006 and 20.11.2006, purportedly signed by appellant no. 1, which according to the appellants are fraudulent documents. This came to the knowledge of the appellants sometime in the year 2011. The appellants made enquiry in July, 2011, in which they learnt that public notices were issued in daily, Navhind Times that the properties were for sale. It is contended that earlier in the year 2007, appellant no. 1 had given general power of attorney in favour of respondent no. 3 for entering into necessary transactions with "M/s Hongkong Investments Company Private Limited" and the said power of attorney was only for the said specific purpose. It is submitted that the said power of attorney was revoked on 09.08.2007 and the

revocation was made known to respondent no. 3. It was also contended that the original documents pertaining to the suit plot/s were lost/stolen and the matter was reported to the police. The appellants had also issued a public notice bringing it to the notice of all concerned, that the original documents of the suit plot/s have been misplaced/lost/stolen.

4. The appellants are seeking declaration that they are the sole and exclusive owners of the suit plot/s and further declaration that the power of attorneys dated 08.11.2006 and 20.11.2006, purportedly executed before the Notary Public G.K. Wadhwa, are fraudulent and forged. The appellants are seeking declaration of the sale deed dated 20.12.2006 (bearing registration no. 3408) in Special Civil Suit No. 44/2011 and the sale deed dated 20.12.2006 (bearing registration no. 3409) in Special Civil Suit No. 45/2011, being illegal, null and void and for consequent declaration that sale deed/s dated 20.01.2011 entered into between the respondent no. 1 and respondent no. 5, are illegal and bad and for consequential reliefs in respect of the mutation entries carried out in respect of the suit properties. The appellants are also seeking restoration/recovery of the suit plot/s and for permanent injunction etc.

5. The appellants filed an application/s for temporary injunction, restraining the respondents or anybody on their behalf from interfering with the said plot/s and further restraining them from alienating or creating third party interest in the said plot/s during the pendency of the suit.

6. The application/s were opposed by the respondents.

7. It was contended that the appellant no. 1 has not advanced any loan of Rs.30,36,750/- to the respondent no. 3, as alleged. It is submitted that the appellants introduced the said case by way of an amendment and that was not the case made out at the initial stage. It was contended that an amount of Rs.30,36,750/- was transferred to the account of the appellant no. 1 by Demand Draft and as such, the appellants cannot justifiably claim that they have not received any consideration in respect of the sale deed/s.

8. It is the case of respondent no. 5, that they are bonafide purchasers for value without notice. It is contended that the purchase is made after issuing public notice, inviting

objections from anyone claiming right or title in respect of the suit plots. It is submitted that since there were no objections received, the respondent no. 5 has proceeded to purchase the suit plot/s. It is contended that the name of respondent no. 5, is also mutated in the records of right.

9. The learned Trial Court by impugned order/s has dismissed the application/s, which are subject matter of challenge in these appeals.

10. I have heard Shri Kantak, the learned Counsel for the appellants, Shri Dessai, the learned Counsel for respondent nos. 1, 2, 3 and 4 and Shri Nadkarni, the learned Counsel for respondent no. 5. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order/s passed.

11. It is strenuously urged on behalf of the appellants that the power of attorneys, purportedly executed in favour of respondent no. 3, are fraudulent and forged documents, in respect of which police complaint is lodged, of which cognizance is taken and a case is pending before the Metropolitan

Magistrate at Mumbai. It is submitted that the original power of attorneys are not forthcoming from any of the parties. It is submitted that the appellant no. 1 was advancing various amounts to respondent no. 3, who in turn was advancing the amount at a higher rate of interest, to others. It is contended that the original documents pertaining to the suit plot/s have been lost/ misplaced, which was brought to the notice of the public, vide public notices dated 18.09.2007 and 28.05.2008. It is contended that the said matter was also reported to the police. Insofar as the receipt of Rs.30,36,750/- is concerned, it is contended that it was by way of refund of advance, taken by the respondent no. 3. It is contended that shortly thereafter, the respondent no. 3 had again obtained a fresh advance from appellant no. 1 and this would clearly show that the amount was not towards the consideration of the sale deeds and was part of the loan transactions between the appellant no. 1 and respondent no. 3.

12. On behalf of the appellants, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass, AIR 2005 SC 104**, in order to submit that Section 52 of the Transfer of

Property Act may not always be a sufficient protection in favour of the plaintiff. In the case of the present nature, the interest of the appellants have to be safe guarded by a specific order, by restraining the respondents from alienating, interfering or creating any third party rights. It is submitted that such an order would not cause any irreparable loss, in as much as the respondents, can be compensated if, they ultimately succeed and in that view of the matter, balance of convenience would lie in favour of the appellants.

13. On the contrary, it is submitted on behalf of the respondents that the initial sale deed/s were in the year 2007, while the ones in favour of the respondent no.5 are of the year 2011. It is submitted that the suit was filed in the year 2012 and in the meantime, the suit plots have been mutated in the records of right in the name of the purchasers. It is submitted that at this stage, there are registered sale deed/s in favour of respondent no. 5 and the consideration is shown to be paid by way of a Demand Draft. It is contended that the appellants were aware of the recitals of the sale deed/s prior to filing of the suit and that the amount of Rs.30,36,750/- being towards payment of some loan, obtained by respondent no. 3, was not

initially set up in the plaint and was introduced only by way of an amendment. It is submitted that respondent no. 5 is in possession of the suit plot/s as owner and as such, the Trial Court has rightly dismissed the application/s for temporary injunction.

14. On behalf of the respondents, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim Khan and Others, (2013) 9 SCC 221**, in order to submit that this Court may not interfere, where the discretion exercised by the Trial Court is not found to be perverse or arbitrary.

15. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

16. In the present case, there are two sets of sale deeds, the initial sale deed executed by respondent no. 3 is of 20.12.2006, while the sale deed in favour of respondent no. 5 is of 20.01.2011. The suit is filed on 15.09.2011. Admittedly, there was no ad-interim relief operating in favour of the

appellants, during the pendency of the application for temporary injunction, which was rejected way back on 15.09.2015. Thus, since inception i.e. from the year 2011, the appellants are without any interim relief in the suit. Be that as it may, in this case, it prima facie appears that the respondent no.5 has purchased the suit properties from respondent no.1, who in turn, claims to have purchased the same from respondent no.3, on the strength of the power of attorney. Although, it is claimed that the original power of attorney, is not forthcoming, a perusal of the sale deed in favour of respondent no. 1, would show that the power of attorney was produced before the Sub-Registrar, Ilhas, where the sale deed/s were executed. It further appears that the amount of consideration of Rs.17,85,000 and Rs.12,60,000/- has been transferred to the account of the appellant no. 1, by way of a Demand Draft on 05.12.2006 and 06.12.2006. Prima-facie, at this stage, the claim of the appellants that the said amount was towards repayment of some advance given by the appellant no. 1 to respondent no. 3, was introduced by way of an amendment. It appears that respondent no. 5 had issued public notices dated 08.01.2011 and 03.07.2011, inviting objections from the public before the purchase of the suit plot/s, to which no objections have been shown to be lodged neither from the appellants nor from anybody else.

17. The Trial Court has found that the Demand Draft was credited on 06.12.2006. It was contended by the appellants that appellant no. 1 was ailing and was admitted in the hospital from 02.11.2006 to 04.11.2006 and as such, it would be improbable that she would have executed the power of attorney on 08.11.2006. The Trial Court found that this aspect needs to be gone into on merits and will have to be established at the the trial. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity.

18. The Hon'ble Apex Court in the case of **Wander Ltd. Vs. Antox India (P) Ltd., 1990 Supp SCC 727**, has *inter alia* held that the Appellate Court will not interfere with the exercise of discretion of the trial Court and substitute its own, except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. It has been held that an appeal against exercise of discretion is "said to be an appeal on

principle" and the Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below, if the one reached by that Court was reasonably possible. The same view has been reiterated in the case of **Mohd. Mehtab Khan** (supra). It can thus be seen that if, the view taken by the Trial Court is a plausible view, based on the facts and circumstances of the case, the Appellate Court would be slow to interfere.

19. In the case of **Maharwal Khewaji Trust** (supra), the appellant had filed a civil suit for possession of the suit property alongwith an application seeking interim relief, restraining the respondent from alienating the suit property or putting up any construction thereon. The Trial Court had granted temporary injunction, which was reversed by the District Court. After unsuccessfully challenging the same before the High Court, the matter went to the Supreme Court. In that case, it was found that the Trial Court had not gone into the question of *prima facie* case (see para 9) and in the facts of that case, it was found that the relief of temporary injunction could not have been refused (see para 10). It can thus, be seen that the case turned on its own facts.

20. In the present case, the Trial Court having refused to grant injunction, on reasons which appear to be plausible, I am not inclined to interfere with the same.

In the result, the appeals are dismissed, with no order as to costs.

However, it is needless to mention that the transfer of suit plot/s, if any, shall be subject to Section 52 of the Transfer of Property Act.

C. V. BHADANG, J.

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