

Sequeira

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

***APPEAL FROM ORDER NO. 229 OF 2009
Along with
CIVIL APPLICATION NO. 268 OF 2009***

Shri.Vishwanath Nivrutti Deokar & ors. ... Appellants
Versus
Shri Suresh Keshavrao Yadav & ors. ... Respondents

***Along with
APPEAL FROM ORDER NO. 281 OF 2009
with
CIVIL APPLICATION NO. 332 OF 2009***

Unique Estate Development Co. Pvt. & anr. ... Appellants
Versus
Shri Suresh Keshavrao Yadav & ors. ... Respondents

***WITH
APPEAL FROM ORDER NO. 464 OF 2009
Along with
CIVIL APPLICATION NO. 564 OF 2009***

Martand Baban More ... Appellant
Versus
Shri Suresh Keshavrao Yadav & ors. ... Respondents

Mr.Jaydeep Deo, for the Appellant in A.O No.229 of 2009 and Applicant in CAA No.268 of 2009.

Mr.R.D.Soni i/b M/s. Ram & Co., for the Appellant in A.O No.281 of 2009 and A.O No.464 of 2009 and Applicant in CAA No.332 of 2009 and CAA No.564 of 2009.

Mr.S.S.Kanetkar, for Respondent No.1 in all Appeals.

***CORAM: N.M. Jamdar, J.
Friday, 1 July 2016.***

P.C.:

All three Appeals from Orders arise from the same impugned order and have been heard together at the time of admission and hearing and are disposed of by the common order.

2. The Respondent No.1-Plaintiff filed a Suit bearing Special Civil Suit No.544 of 2007, for specific performance of an Agreement in respect of properties situated at village Lohegaon, Taluka Haveli, District Pune.

3. According to the Respondent - Plaintiff, an Agreement was executed on 17 February 1995, entrusting development rights to the suit property. It was the case of the Respondent-Plaintiff that pursuant to the execution of this document certain events transpired which came to the light of the Respondent-Plaintiff to indicate that the Agreement to Sale will not be executed. Suit was accordingly instituted for relief of specific performance and injunction. In this Suit, an application below Exhibit 5 to restrain the Appellants from creating third party rights or carrying out any construction, was filed. The learned Civil Judge, by the impugned Judgment and Order dated 12 January 2009, allowed the Application and restrained the

Defendants from creating any third party rights in the suit property, pending the trial. The Defendants, under different lots filed the present three independent Appeals. The Appellants in Appeal from Order No.229 of 2009 are original Defendant Nos.1, 3, 4, 5, 6, 7, 10 and 20. The Appellants in Appeal from Order No.281 of 2009 are original Defendant Nos.21 and 22 and Appellants in Appeal from Order No.464 of 2009 is Defendant No.23. All three Appeals were admitted by order dated 4 May 2009.

4. At the time of admission of the Appeal on 4 May 2009, in the Civil Applications by a detailed order, this Court granted stay to the impugned order dated 12 January 2009. Thereafter the Respondent-Plaintiff filed a Special Leave Petition in the Apex Court. It is informed by the counsel that the Apex Court declined to interfere with the order passed on 4 May 2009 staying the impugned order and the Apex Court directed expeditious disposal of the Appeal. Accordingly, the Appeals are taken up for consideration.

5. Heard learned counsel for the parties.

6. By the impugned order the learned Civil Judge had enjoined the Appellants from carrying out any further construction in the suit property. The learned trial Judge found that it was necessary to grant such injunction for protecting the property. However, when the

Appeals were heard by this Court challenging the impugned order, the order of injunction was stayed and the stay has not been interfered and consequent thereto there is no order of injunction operating against the Appellants from the year 2009.

7. The Suit filed by the Respondent-Plaintiff is for specific performance. It was the case of the Respondent-Plaintiff who is the original owner, that the Agreement was executed by Defendant Nos.1 to 9. However, the subsequent Agreements dated 17 February 1995 and 4 July 1997 by Defendant Nos.1 to 19 and 20 in favour of Defendant No.21 prima facie cannot be disputed as the Respondent-Plaintiff is a confining party. The main question that is to be decided in the Suit is, whether the Respondent-Plaintiff can claim specific performance of the Agreement, on 2 November 1994, when rights have been assigned in favour of Defendant No.21 by a subsequent Agreement. The Agreement dated 17 February 1995 prima facie indicates that Respondent-Plaintiff can pursue a monetary claim against Defendant No.21 who is the developer and if injunction is not granted the Respondent-Plaintiff can be secured in terms of money.

8. Since it is settled that an order of injunction normally should not be granted if the resultant loss can be compensated in terms of money and that no injunction is operating from the year 2009, it will

be equitable that the position which is operating since the year 2009 is continued till the disposal of the Suit. It is informed that the Suit is already at the stage of framing of issues, being the Suit of the year 2007. Accordingly, all the three Appeals are disposed of by quashing and setting aside the order dated 12 January 2009 by the learned Civil Judge Senior division, Pune.

9. Considering that the various parties involved and that the Suit is pending since the year 2007 and has reached the stage of issues, the learned Civil Judge, Pune will give priority to the hearing of the completion of the Suit and make an endeavour to dispose of the Suit within the period of eight months from the order of this Court reaching the Court of Civil Judge, Pune. All the parties will cooperate with the learned Civil Judge for early disposal of the Suit. It is clarified that the observations in this order and the earlier orders of this Court are prima facie and the Suit will be decided on its own merits. Civil Applications are disposed of accordingly.

(N.M.Jamdar, J.)