

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1107 OF 2015

M/s. Swayam Builders	... Appellant
Vs.	
Asgarbhai Valibhai Vohra	... Respondent

Mr. Ashutosh R. Gole, Advocate for the appellant.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th January, 2016.**

P.C.:

This Appeal from Order is directed against the order dated 4th April, 2015 in Special Civil Suit No. 946 of 2011 allowing the Application under Exhibit 5 and thereby restraining defendant nos. 1 to 8 from creating any encumbrances, charge or third party interest upon the suit land and also from carrying out any work of any nature additionally over the suit land.

2. The appellant is a builder/developer and defendant no. 8. The plaintiffs, who are respondent nos. 1 and 2, have filed the suit for declaration and injunction against defendant nos. 1 to 7, who are the owners of the suit land and defendant no. 8, who is the appellant. In this case, defendant nos. 1 to 6 have entered into an sale deed on 14th January, 1989 with the original plaintiffs/respondent nos. 1 and 2 in respect of the suit land. Thereafter, the owners of the land have again entered into the registered sale deed with the appellant on 8th February, 2011. As per the

case of the appellant, they were put in possession immediately after the sale deed and they are in possession of the suit land. The plaintiffs, being the purchasers of the suit land prior to the present appellant, after having knowledge of this transaction filed a Special Civil Suit No. 946 of 2011 for declaration and perpetual injunction.

3. The learned counsel for the appellant submitted that the trial Court in its order especially in paragraph 15 has mentioned that both the parties could not bring any cogent evidence corroborating to the pleadings as to the legality or veracity of the sale deeds and also observed that determining all these aspects, it needs full fledged trial. The learned counsel submitted that despite these observations, the learned Judge has allowed the Application under Exhibit 5 and passed the order of injunction against the appellant. He submitted that the sale deed executed by the land owners/defendant nos. 1 to 6 in favour of the original plaintiffs is illegal and not valid. He submitted that all the defendants who claimed to be land owners, did not sign the sale deed dated 14th January, 1989. One of the defendant/land owner who signed for the other land owners, claimed to be a Power of Attorney Holder, however, no Power of Attorney was filed before the Court. The said sale deed is defective. He submitted that on the contrary, all the land owners/defendant nos. 1 to 6 have signed the sale

deed which was executed by them in favour of defendant no. 8/appellant.

4. I have gone through the order passed by the learned Judge, the plaint and also the written statement which is annexed in this Memorandum of Appeal. As per the submissions of the learned counsel for the appellant, the possession of the suit land is with the appellant and therefore, though the earlier sale deed was executed in favour of the original plaintiffs and who were not in possession, have rushed to the Court for injunction. Despite the observations made by the learned Judge in paragraph 15 of his order that *prima facie* no sufficient evidence is produced by either of the parties in support of their sale deeds, if the possession of the suit land is with the appellant/defendant no. 8, then the order passed by the learned Judge of the trial Court restraining defendant no. 8 and other persons from creating any third party interest or to carry out construction and change the nature of the suit land is appropriate and require relief to keep the status of the land as it is to avoid further litigations. Under such circumstances, I do not think there is any merit in the Appeal. The order passed by the learned trial Judge is hereby maintained.

5. The learned counsel for the appellant submitted that the order of

status quo is to be granted against the original plaintiffs and defendant nos. 1 to 6, as they may dispose of the property on the basis of their earlier first registered sale deed. Such prayer cannot be entertained at this stage in Appeal but other remedy is available to the appellant before the trial Court.

6. Thus, Appeal from Order is dismissed summarily.

(MRIDULA BHATKAR, J.)