

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

CIVIL REVISION APPLICATION NO. 678 OF 2013

M/s. S.V.Subramanyam

..Applicant

Vs

Mr. Ayub Gulab Shaikh and Ors

.. Respondents

Mr. Tejas D. Deshmukh, Advocate for Applicant.

Mr. Drupad S. Patil, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 11/04/2016

PC:

1. Heard Mr. Tejas Deshmukh, learned counsel for the applicant and Mr. Drupad Patil, learned counsel for respondent no.1 at length.

2. By this application under Section 115 of C.P.C, the applicant has challenged the Judgment and order dated 22.4.2013 passed by the learned Jt. Civil Judge, Sr. Dn., Pune, below Exh.123 in Spl. Civil Suit No. 410 of 2010. By that order, the learned trial Judge overruled the objections raised by the applicant, hereinafter referred to as 'defendant no.4, on the ground of maintainability of the suit and held that Civil Court has jurisdiction to entertain and try the suit.

3. Respondent no.1, hereinafter referred to as 'plaintiff', has instituted the suit in the Court of Civil Judge, Senior Division,

Pune for declaration that the sale certificate and auction sale in favour of defendant no.4 on 31.8.2006 in I.A.336/06 in I.A. 1/2004 is null and void in respect to plot no.74 in Sector No.23, P.C.N.T.D.A, situate at Village Nigadi, P.C.M.C., Pune (for short, 'suit property'); for perpetual injunction restraining the defendants from dispossessing the plaintiff from the suit property.

4. Pending the suit, the plaintiff took out application Exhibit-5 for interim relief. Defendant no.4 filed his say in August 2010 opposing the application. By order dated 5.11.2011, the learned trial Judge rejected the application. Aggrieved by this decision, the plaintiff preferred Appeal from Order No.242 of 2002. Appeal from Order was disposed of on 17.10.2012. By consent of the parties, the order dated 5.11.2011 was set aside and the matter was remitted to the trial Court for fresh consideration. The trial Court was directed to decide issue of jurisdiction. Defendant no. 4 took out application under section 9-A of C.P.C on 6.11.2012 raising two-fold contentions. Firstly, as the sale certificate challenged in the suit is issued at Chennai and as the plaintiff has challenged the sale certificate, the Court at Pune will have no territorial jurisdiction. The other objection raised was based on Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'Act'). Defendant no. 4

contended that remedy of the plaintiff is to approach Tribunal constituted under the Act and not by filing suit in civil Court. By the impugned order, the learned trial Judge overruled these objections. It is against this order, defendant no.4 has instituted present C.R.A.

5. Mr. Deshmukh submitted that the plaintiff has sought declaration that the sale certificate and auction sale in favour of defendant no.4 on 31.8.2006 is null and void in respect to the suit property. As the plaintiff has challenged only the sale certificate, the suit is not for immovable property. He relied upon the decision of Madras High Court in the case of Cypress Semiconductor Technology India Pvt Ltd Vs M.G. Brothers Lorry Service, 2008 (2) MLJ 307 and in particular paragraph 19 which, in turn, relied upon the decision of the Apex Court in the case of Adcon Electronics Pvt Ltd Vs. Daulat, (2001) 7 Supreme Court Cases 698 and in particular paragraph 15 of the Apex Court's decision.

6. Mr. Deshmukh relied upon Section 20 of the Act to contend that remedy of the plaintiff is to file Appeal before Appellate Tribunal and as the Act is self-contained Code, jurisdiction of the Civil Court is expressly barred. He, therefore, submitted that the learned trial Judge ought to have dismissed the suit.

7. On the other hand, Mr. Patil supported the impugned order.

He relied upon paragraph 34 of Cypress Semiconductor Technology India Pvt Ltd's decision (supra) to contend that where serious allegations of fraud and collusion are alleged against the defendants, jurisdiction of Civil Court is not ousted by Section 18 of the Act. He submitted that perusal of the plaint shows that the plaintiff has specifically averred that the order dated 31.8.2006 is obtained by collusion between defendants no. 2 to 4 and by practicing fraud on D.R.T., Chennai.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As far as the objection relating to territorial jurisdiction is concerned, perusal of the plaint shows that the plaintiff claims to be in possession in pursuance of the agreement dated 27.12.2005. The plaintiff has alleged that the defendants no. 2 to 4 have obtained order dated 31.8.2006 by collusion and practicing fraud on D.R.T., Chennai. Apart from that, the suit property is situate at Pune. In view of Section 16(c) and (d) of C.P.C. it cannot be said that the Court at Pune has no territorial jurisdiction. In paragraph 10 of the impugned order, the learned trial Judge has recorded a categorical finding that the suit falls under Section 16 of C.P.C. In view thereof, I do not find that the learned trial judge has committed any error in overruling the objection relating to territorial jurisdiction.

9. As far as bar under the provisions of the Act is concerned, in paragraph 34 of Cypress Semiconductor Technology India Pvt Ltd case (supra), the learned Single Judge of Madras High Court has observed thus:

“34. Therefore, in my considered view, the jurisdiction of this Court to try the present suit where serious allegations of fraud and collusion are alleged against the defendants, in the manner in which a property was brought to sale by private negotiation, is not ousted by Section 18 of the Act 51 of 1993. Hence, hold that the suit is not barred by Section 18.”

10. In the case of Adcon Electronics Pvt Ltd (supra), the Apex Court was interpreting clause 12 of Letters Patent. The Apex Court considered Section 22 of Specific Relief Act, 1963 and observed in paragraphs 17 and 18 thus :

“17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.

18. In the instant case, the suit is for specific performance of agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed as such it cannot be treated as a “suit for land”.”

In view thereof, the reliance placed by Mr. Deshmukh on

paragraph 19 of the decision of Cypress Semiconductor Technology India Pvt Ltd (supra) does not advance the case of defendant no.4.

11. In view of Section 18 of the Act, it cannot be said that the jurisdiction of the Civil Court is ousted. Hence, no case is made out for invocation of powers under section 115 of C.P.C. Application fails and the same is dismissed.

(R.G.KETKAR, J.