

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1133 OF 2015
WITH
CIVIL APPLICATION NO.1410 OF 2015

Mohanbhai Pratapbhai Chauhan and Another ... Appellants
Ori. Defendants

vs.

Natwarsinh Ramsinh Chauhan ... Respondent/
Ori. Plaintiff

Mrs. Varsha Palav a/w. Mr. Ajinkya Palav i/b. The Laureate, for
the Appellants.

Mr. P.D. Dalvi i/b. Mr. Girish Agrawal, for the Respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **5th JANUARY, 2016**

P.C.:

. Admit. Heard and decided finally at the stage of admission
by consent of the parties.

2. This Appeal is directed against the order dated 12th
October, 2015 passed by the learned Civil Judge (S.D.), Dadra and
Nagar Haveli, Silvassa thereby allowing the application (Exhibit 5)
filed by the Plaintiff and rejecting the application (Exhibit 33)

challenging the jurisdiction of the civil Court filed by the Defendants. The Appellants i.e. original Defendants have challenged the order of rejecting the application (Exhibit 33) by filing a Writ Petition and therefore the order passed below Exhibit 5 is only considered as a challenge in this Appeal.

3. The Plaintiff has filed a suit for specific performance of contract and permanent injunction against the present Appellants. The Appellants who are the original Defendants are the owners of Survey No.1180/2/2 admeasuring about 1 Hr. 02 R situated at Naroli. Out of which by the agreement dated 22nd November, 2006 the land admeasuring 1017 sq.mtrs. was agreed to be sold to the Plaintiff for the consideration of Rs. 33,25,000/-. As per the case of the Plaintiff, the entire amount was paid by cash and cheques to the Defendants at the time of execution of the agreement of sale and he was put in possession at the same time. The said title of the suit land could not be entirely transferred in the name of Plaintiff due to restraintment under Section 4(7) of the Dadra and Nagar Haveli Land Reform Regulations,1971 wherein the permission of the Collector is a condition precedent for sale of immovable property. The conveyance

was not taken place and as per the case of the Plaintiff, the Defendants were to take steps for seeking permission of the Collector which was not taken. Therefore, the Plaintiff filed a suit for specific performance and therein he filed an application for injunction that the Defendants should not interfere in his possession.

4. The learned counsel for the Appellants submitted that this agreement to sale was not admitted by the Appellants. The Appellants were never intended to sale their land to the Plaintiff. The document was prepared as a security towards the loan transaction between the parties. She submitted that one of the Defendants is not the owner of the land. However, he was in need of money and therefore the Defendants who are father and son have obtained loan of Rs. 7,09,000/- from the Respondent i.e. Plaintiff and against this document it stands only as a security for loan. She further submitted that the possession of the immovable property can not be parted with as per Section 4(7) of the Dadra and Nagar Haveli Land Reform Regulations, 1971. She further argued that recitals in the agreement to sale are not consistent with case of the Plaintiff that it was agreement to sale of the land but it supports the case of the

Appellants that it was just created as a security. She further submitted that the land stands in the name of Appellants. The possession was never handed over to the Respondent. The Appellants have produced number of documents (i.e. house tax paid receipts, land revenue receipts, assessment extract issued by group agreement etc.). She submitted that these documents ought to have appreciated by the trial Court on the point of possession.

5. The learned counsel for the Respondent has supported the order passed by the learned Civil Judge. He pointed out that the learned Judge has considered the restraintment under Section 4(7) of the Dadra and Nagar Haveli Land Reform Regulations, 1971 and has answered to it in para 10 of the order. He further submitted that the fact of execution of the agreement is not disputed by the Appellants. He pointed out that on every page of the said agreement of sale, the signatures of the Appellants are appearing. The Plaintiff/Respondent is in possession of the suit property. If at all the Appellants had executed the said agreement only as a security towards the loan, the Appellants did not file suit for declaration that agreement of sale is a bogus document in respect of transaction of the land has in fact taken

between the parties. The Plaintiff will get the sale deed executed of the suit property after obtaining permission from the Collector. He supported the order of the learned Judge.

6. Heard.

7. The learned trial Judge has restrained the Appellants from causing obstruction, create hurdles to the possession and cultivation of Plaintiff over suit property and also restrained the Appellants from dispossessing Plaintiff from the possession of suit property without due process of law. The agreement of sale is produced before the Court. In the said agreement there is specific clause in respect of handing over the possession of suit land to the Respondent. There is also mention of the transaction of the land for total amount of consideration as Rs. 33,25,000/- which was paid in cash. However, in the Plaint it is mentioned that the amount i.e. Rs. 7,09,000/- was paid by cheque may be prior to the date of agreement and remaining amount was paid in cash. When the said agreement is produced before the Court, *prima facie* to dislodge the contents in the agreement, it is necessary for the vendor to show some documents or

facts to hold that the transaction was not taken as per the contents in the agreement for sale. The intention of the parties was different. The amount was paid for security against loan. However, after hearing the submission of the learned counsel and after going through the record, I am unable to find any such documents or facts to accept the submission of the learned counsel for the Appellants.

8. Perused the order passed by the learned trial Judge. The learned Judge has discussed all the points raised by the original Defendants/Appellants and so also the averments made by the Plaintiff in detail. The Appellants could not produce a single document to show at any point of time that since 2006 the Appellants have repaid any amount out of Rs. 7 lacs to the Respondent to accept the submission that it was a security towards the loan.

9. In view of this, I do not find any illegality in the order dated 12th October, 2015 passed by the learned Civil Judge (S.D.), Dadra and Nagar Haveli, Silvassa. Therefore, the order is hereby maintained.

10. The Appeal from Order is dismissed.
11. In view of above, the Civil Application stands disposed of.

(MRS.MRIDULA BHATKAR, J.)