

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1135 OF 2015

a/w
CAA/1413/2015

Abdul Hameed Khan Matwan	... Appellant
Vs.	
Shabbir Ahmed S. Khan	... Respondent

Mr.R.S. Apte, Senior Advocate a/w Mandar Limaye a/w Mahendra
Agavekar for the Appellant
Mr.Kunal bhange i/b A.D. Joshi for Respondent

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 19th JANUARY, 2016

P.C.:

1. Admit. By consent of the parties, Appeal called out and heard finally at the stage of admission.
2. This Appeal from order is filed by the appellant, who is the original defendant, challenging the order dated 27.10.2015 passed by the 4th Joint Civil judge, Senior Division, Thane, thereby allowing the application at exhibit 5 and granting temporary injunction against the defendant that he shall not disturb the possession of the plaintiff over the suit property and shall not create third party interest in the suit property and not dispose of the same till the suit is decided.
3. The defendant represented to the plaintiff that he is an absolute and lawful owner of the suit property. It is a land that is 7 ares from Survey

No.75 Hissa No.2 and 59 R 7P from Survey No.76 from villa Kausa, Mumbra, District Thane. Then, the plaintiff decided to purchase the said land for total consideration of Rs.2,31,00,000/-. As per the case of the plaintiff, the plaintiff paid an amount of Rs.1,06,00,000/- in cash and Rs.25 lacs by cheque dated 31.1.2015 drawn on DCB bank, Mumbra. Then, the plaintiff and the defendant entered into two agreements of sale dated 23.1.2015 for one portion and 24.1.2015 for the remaining portion of land. The defendant also executed power of attorney dated 23.1.2015 in favour of the plaintiff. As per the case of the plaintiff, the defendant had handed over actual, physical possession to the plaintiff and so the plaintiff started developing the property. He constructed compound wall, engaged security services and levelled the suit property and started some temporary work. In the month of August, the plaintiff contacted the defendant for the completion of the transaction and showed his readiness and willingness to pay the remaining amount for which he found that the defendant was reluctant and after investigation, he found that the property was in litigation and a Second Appeal No.693 of 2013 in respect of legal heirs of the original owners was pending. Also, Special Civil Suit No.162 of 2015 filed against the Dawood Rahim Saheb Gulbar and others was also pending and these facts were suppressed by the defendant. The defendant has denied all these allegations and has taken a stand that he is a financially well off person. He denied that the plaintiff had paid him Rs.1,06,00,000/-

in cash and the plaintiff paid only Rs.25 lacs by cheque for the purpose of development. He denied all the agreements.

4. Mr.Kumbhakoni, the learned Senior Counsel submitted that the plaintiff cannot claim any right on the basis of unregistered agreement of sale. The agreements which are relied are forged and bogus. The plaintiff has no right in the property and the possession is still with the defendant. He submitted that in view of section 49 of the Registration Act, this unregistered agreement has no value and the plaintiff is not entitled to retain possession on the basis of such document. He submitted that the learned Judge has erred in holding that the possession of the suit property was with the plaintiff by illegally allowing exhibit 5 application against the defendant who is the land owner and is in possession of the suit property.

5. Per contra, the learned Counsel for the respondent i.e., the original plaintiff has submitted that the fact that the payment of Rs.25 lacs was made and pursuant to that agreement, the possession of the such property was handed over the plaintiff. The plaintiff is at present developing the land and has spent money on it and hence, the impugned order is to be maintained.

6. Perused the impugned order and the documents produced herewith. It is a legal position that a person cannot claim ownership or title in the immovable property on the basis of the unregistered agreement.

However, at the stage of exhibit 5, there is no question of ownership can be dealt with. The parties have to show and prove the possession of the suit property. Though it is a case of the defendant that the agreements are forged and had never been executed by the defendant, it is a matter of evidence. However, pursuant to this agreement, prima facie, it can be said that the amount of Rs.25 lacs was paid by the plaintiff to the defendant. The payment of Rs.1,06,00,000/- is also a matter of evidence as it was paid in cash. It appears that the plaintiff has taken some steps in respect of putting compound wall or levelling of the land. However, it cannot be concluded positively that the possession of the entire land was handed over by the defendant to the plaintiff.

7. In view of this, the order of the trial Court is modified thus:

- i) The defendant or any other person on his behalf shall not create any third party right or part with the ownership or possession of the suit property and shall not create any encumbrance till the decision of the suit.
- ii) Parties to maintain status quo as on today.

8. Appeal from order and the Civil Application are disposed of accordingly.

(MRIDULA BHATKAR, J.)