

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APEAL FROM ORDER NO. 28 OF 2017
WITH
CA/6445/2017 IN AO/28/2017**

M/S KAKA DEVELOPERS A REGISTERED
PARTNERSHIP FIRM, THROUGH IT'S PARTNER
NARENDRA DEVICHANDJI AGARWAL
VERSUS
RAMESHCHANDRA GOVINDRAM @ GOVINDLAL ASOPA
AND OTHERS

...
Advocate for appellant : Mr V D Salunke
Advocate for Respondents : Mr. V D Sapkal h/f Amit S.
Deshpande For R-1 & 4,
Mr H V Patil Advocate for Respondent Nos.2 and 3.

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CORAM : V.K. JADHAV, J.
Dated: June 05, 2017

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PER COURT :-

1. Being aggrieved by the order passed below Exh.5 dated 25.4.2017 in RCA No.24/2017 by the District Judge-3, Latur, thereby rejecting the application seeking temporary injunction, the original plaintiff has preferred this appeal.

2. Brief facts, giving rise to the present appeal are as follows :-

a] The appellant-plaintiff is a registered partnership Firm instituted a Special Civil Suit No.34/2012 before the Civil Judge S.D., Latur against respondent-defendants for specific performance of Contract and a decree of perpetual injunction. It is the case of the appellant-plaintiff that, the respondent-defendant no.1 agreed to sell the suit land for the consideration @ Rs.10,45,000/- per acre and on the same date respondent-defendant no.1 accepted and received earnest amount of Rs.3.00 lacs from the plaintiff and accordingly executed an agreement of sale in presence of the witnesses. By and under the said agreement of sale, respondent-defendant No.1 agreed to execute the sale deed of the suit land in favour of the appellant-plaintiff by receiving remaining consideration amount and possession of the suit land was agreed to be delivered on the day of the execution of the sale deed. No specific period was stipulated for execution of the sale deed. Under the said agreement of sale, it was agreed that the appellant-plaintiff shall have to pay Rs.10,00,000/- to respondent-defendant no.1, if needed by him before

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execution of the sale deed. It is also the case of the appellant-plaintiff that, respondent-defendant no.1 was in dire need of money and at his request the appellant-plaintiff paid an amount of Rs.10.00 lacs out of the remaining consideration amount before the witnesses. Further, respondent-defendant no.1 also requested the appellant-plaintiff to cultivate the suit land for protecting the possession on his behalf and thus, the appellant-plaintiff obtained the possession of the suit land in June, 2009. Since then, the appellant-plaintiff is in possession of the suit land and the same is under his cultivation. However, on 1.3.2012 the appellant-plaintiff came to know that respondent-defendant no.1 and 2 on 28.2.2012 have effected the compromise in pending RCS No.171/2009 and agreed to partition and divide the suit land between them. It has been stated in the compromise that eastern side portion of 3 acres 10 gunthas land has been allotted to the share of defendant no.2 Ujwala and remaining western side 6 Acres portion was retained by respondent-defendant no.1. It is the case of the appellant that said compromise has been

entered into by respondent-defendant nos. 1 and 2 with malafide intention to defeat the plaintiff's right on the basis of agreement of sale executed in the year 2005. However, the appellant-plaintiff came to know that respondent-defendant no.2 on 28.2.2012 itself has executed a sale deed of eastern side of 1 acre land out of suit land in favour of respondent-defendants no.3 and 4. The appellant-plaintiff therefore constrained to institute the suit for a decree of specific performance of contract and a decree of perpetual injunction in respect of the suit land. The appellant-plaintiff has also filed an application Exh.5 alongwith the suit seeking the order of temporary injunction to protect his possession over the suit land. The learned 3rd Jt. Civil Judge, J.D., Latur initially by order dated 6.3.2012 issued ad-interim injunction against respondent-defendants and further by order dated 11.4.2012 confirmed the said order. Being aggrieved by the same, respondent-defendants approached this Court by filing AO No.67/2012 and this Court by order dated 18.12.2012 appointed the appellant herein-original plaintiff as a receiver and

further permitted him to use the suit property for cultivation only. Being aggrieved by the same, both the parties preferred petitions for Special Leave to Appeal before the Supreme Court and as agreed by the parties before the Supreme Court, the Supreme Court has directed the Trial Court to dispose off the suit expeditiously by maintaining the present position in respect of the suit land. The Supreme Court has thus set aside the order of this Court and directed the parties to maintain status-quo prevailing as on date and further directed the trial court to make all endeavor to dispose of the suit in question expeditiously and if possible within a period of one year from the date of receipt of a copy of the order.

b] Respondents-defendants strongly resisted the suit by filing written statement.

c] Both the parties lead their oral and documentary evidence in support of their rival contentions.

d] The learned 3rd Jt. Civil Judge S.D., Latur by judgment and decree dated 22.12.2016 dismissed the suit.

e] Being aggrieved by the same, the appellant herein-original plaintiff has preferred R.C.A. No.24/2017 before the District Court, Latur and also filed an application Exh.5 in the appeal seeking relief of temporary injunction for protecting the possession over the suit land till the disposal of the appeal. The learned District Judge-3, Latur by its impugned order dated 25.4.2017 rejected the said application. Hence, this appeal.

3. Mr.V.D. Salunke, the learned counsel for the appellant-original plaintiff submits that, the learned Judge of the Trial Court by order dated 6.3.2012 issued ad-interim injunction against the respondents-defendants preventing them from obstructing the possession of the appellant-plaintiff over the suit land and further by order dated 11.4.2012 confirmed the said order. Said order remained in force till 18.12.2012.

Further by order dated 16.12.2014 the Supreme Court has directed the parties to maintain status-quo prevailing as on date in respect of the suit land and said order remained in force till the disposal of the suit on 22.12.2016. The learned counsel submits that, respondent-defendant no.1 was in dire need of money and thus the appellant-plaintiff has paid him Rs.10.00 lacs out of the balance amount of consideration. Respondent-defendant no.1 after receiving the said amount also requested the appellant-plaintiff to cultivate the suit land for protecting the possession on his behalf. Thus, the appellant-plaintiff is in possession over the suit land since June, 2009. Same is also evident from the proved facts that cattle shade, bore well and one temple are in existence in the suit land. It is the case of the appellant-plaintiff that, cattle shed and temple has been constructed by him and also bore well was taken by him. Respondent-defendant no.1 has come with the pleadings that one Afzal Qureshi is in possession of the suit land, however, there is no evidence to that effect. The learned counsel submits

that, the Trial Court has not appreciated the evidence in its proper perspective and, therefore, the appellant-original plaintiff has strong hope of success in the appeal. Learned counsel submits that, possession of the appellant-plaintiff over the suit land needs to be protected till the disposal of the appeal pending before the Lower Appellate Court. Learned counsel for the appellant-original plaintiff submits that because the trial court has negated the plea of the appellant-plaintiff, the same would not dis-entitled the appellant-plaintiff for grant of interim relief.

4. The learned counsel in order to substantiate his contention, placed his reliance on a judgment in case of **Maneklal Jainarayanji Sabu Vs. Ruprao Ganpatrao Bhonde reported in 2001 (2) Bombay CR 71.**

5. Mr V.D.Sapkal h/f Mr. Amit Deshpande, the learned counsel appearing for respondent-defendant nos.1 and 4 submits that, as per the pleadings of the appellant-plaintiff that on 1.1.2005 respondent-

defendant no.1 was agreed to sell the suit land to the plaintiff for the consideration of Rs.10,45,000/- per acre and on the same day, respondent-defendant no.1 accepted and received earnest amount of Rs.3.00 lacs from the appellant-plaintiff and executed an agreement of sale in presence of the witnesses. It is further pleadings of the appellant-plaintiff that under the said agreement of sale, respondent-defendant no.1 agreed to execute the sale deed of the suit land in favour of the appellant-plaintiff by receiving remaining consideration amount and possession of the suit land was agreed to be delivered to the appellant-plaintiff on the day of the execution of the sale deed. Moreover, under the agreement of sale it was also agreed that the appellant-plaintiff shall have to pay Rs.10,00,000/-(Rs. Ten lacs) to respondent-defendant no.1 if required by respondent-defendant no.1 before execution of the sale deed. Learned counsel submits that appellant-plaintiff has further pleaded that respondent-defendant no.1 was in dire need of money and thus requested the appellant-plaintiff to pay said amount as agreed in the agreement

of sale. At the same time, respondent-defendant no.1 requested the plaintiff that he resides at Mumbai and owing to his old age, he was unable to look after the cultivation of the suit land, and plaintiff to cultivate the suit land for protecting the possession on his behalf. Learned counsel submits that, it is specific pleading of the appellant-plaintiff that his possession over the suit land is not under or on the basis of agreement of sale, but it is on the basis of mutual understanding and arrangement between the plaintiff and defendant no.1 and it is permissive possession on behalf of defendant no.1. Any how the plaintiff is in lawful and exclusive possession of the suit land.

6. Learned counsel further submits that, as per the pleadings of the plaintiff himself he is in possession of the suit land as a care taker/agent on behalf of the respondent-defendant no.1 and thus, there is no question of protecting possession of the appellant-plaintiff over the suit land in the capacity as care taker/agent. Learned counsel submits that, care taker

or agent holds the property of the principal only on behalf of the principal. He acquire no right or interest whatsoever in the property and even long possession in that capacity would be of no legal consequences. Mr. Sapkal submits that the appellant-plaintiff has also contended in his affidavit of evidence that its possession over the suit land is not under or on the basis of agreement of sale, but it is on the basis of the mutual understanding and arrangement between the plaintiff and defendant no.1 and it is permissive possession on behalf of defendant no.1.

7. Mr. Sapkal, in order to substantiate his submission, placed his reliance on the following two cases.

1. **Behram Tejani and others Vs. Azeem Jagnani reported in (2017) 2 Supreme Court Cases 759.**
2. **Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira (dead) through L.Rs. Reported in (2012) 5 Supreme Court Cases 370.**

8. Learned counsel further submits that, Trial Court

has recorded the finding to issue no.2 in the negative and held that the plaintiff failed to prove that defendant no.1 has executed the agreement of sale in favour of the plaintiff to sell the suit property for the consideration of Rs.10,45,000/- per acre by accepting earnest amount of Rs.3.00 lacs on 1.1.2005 and further recorded finding to issue no.3 in the Affirmative and held that defendant no.1 proved that agreement to sell is a nominal document not intended to be enforced. The learned Judge of the Trial Court has also recorded finding in the negative to issue no.4 and thereby held that the plaintiff failed to prove that defendant no.1 put the plaintiff in possession of the suit property in the year 2009 by accepting further consideration of Rs.10.00 lacs. Learned counsel submits that, the lower appellate court has thus rightly rejected the application exh.5. No interference is required.

9. On careful perusal of the pleadings of the plaintiff, it appears that the plaintiff has approached the Court with the specific pleadings that respondent-defendant

no.1 agreed to execute the sale deed of the suit land in his favour by receiving remaining consideration amount and possession of the suit land was agreed to be delivered on the day of execution of the sale deed. The appellant-plaintiff has specifically pleaded that in the month of June, 2009 at the request of the defendant no.1 plaintiff paid an amount of Rs.10.00 lacs out of the remaining consideration amount. At that time, respondent-defendant no.1 told the plaintiff that he resides in Mumbai and owing to his old age, he is unable to cultivate the suit land, and thus requested the plaintiff to cultivate the suit land for protecting its possession on his behalf. The plaintiff further pleaded that possession of the plaintiff on the suit land is not under or on the basis of the agreement of sale and it is on the basis of mutual understanding and arrangement between the plaintiff and defendant no.1 and it is permissive possession on behalf of defendant no.1.

10. In a case **Behram Tejani and others Vs. Azeem Jagnani reported in (2017) 2 Supreme Court Cases**

759 (supra) relied upon by learned counsel for respondent nos.1 and 4, in paragraph no.12 of the judgment, the Supreme Court has referred the case of Rame Gowda Vs. M. Varadappa Naidu, reported in (2004) (1) SCC 769, wherein the Supreme Court while dealing with the concept of settled possession in paragraph no.9 has observed as under :-

“ 9.....“The “settled possession” must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase “settled possession” does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession.”

11. The Supreme Court in the above case, in paragraph no.13 further referred case of **Maria Margarida** reported in **(2012) 5 Supreme Court Cases 370** in paragraph no.13 of the judgment observed as under :-

13. The matter was further elaborated in subsequent decision of this Court in *Maria Margarida (Supra)* as under:

“97. Principles of law which emerge in this case are crystallized as under:

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

14. Thus, a person holding the premises gratuitously or in the capacity as a caretaker or a servant would not acquire any right or interest in the property and even long possession in that capacity would be of no legal consequences. In the circumstances City Civil Court was right and justified in rejecting the prayer for interim injunction and that decision ought not to have been set aside by the High Court. We therefore, allow the appeal, set aside the judgment under appeal and restore the Order dated 29.04.2013 passed by the Bombay City Civil Court in Notice of Motion No.344 of 2013 in Suit No.408 of 2013.

12. In a case **Maneklal Jainarayanji Sabu Vs.Ruprao Ganpatrao Bhonde** (supra), relied upon by the learned counsel for the appellant-plaintiff, in paragraph no.2 and 3 of the judgment, this Court has made following observations :-

2. In my view, this is not the correct approach adopted by the lower Appellate Court while refusing interim relief, especially

when the appeal is admitted and pending before it. Merely because the trial Court has negated the plea of the appellant, would not dis-entitle the appellant for grant of interim relief, unless other special reasons are recorded in that behalf. In the circumstances, the impugned order cannot be sustained in law.

3. *It is rightly contended by the learned Counsel for the appellant that the interim arrangement had continued between the parties for over last ten years pursuant to the agreement reached between them, which is reflected in the order dated 20th April, 1993, in view of the undertaking dated 25-10-1989. In the circumstances, the said interim arrangement shall continue till the appeal is finally disposed of by the Additional District Judge, or till such time the lower Appellate Court finds that the appellant has become dis-entitled for such relief, for the reasons to be recorded in that behalf. The lower Appellate Court is directed to decide the appeal, being Regular Civil Appeal No. 88/1998 expeditiously, preferably within six months from the receipt of this order.*

13. In the above said paragraph no.2, this Court has observed that merely because the trial court has negated the plea of the appellant, would not dis-entitle the appellant for grant of interim relief, unless other special reasons are recorded in that behalf.

In the instant case, the lower appellate Court has recorded a special reason for not considering the application Exh.5 and in view of the ratio laid down by the Supreme Court in the said case of Behram Tejani and others Vs. Azeem Jagani (2017) 2 Supreme Court Cases 759, I do not find any fault in the impugned order. However, considering the peculiar facts of the

case, it would be just and appropriate, if the lower appellate court is directed to dispose of the pending appeal as expeditiously as possible.

14. In view of the above, I do not think that the appellant-plaintiff is entitled to seek the order of temporary injunction to protect his so called possession over the suit land. So far as findings recorded by the Trial Court after full fledged trial of the suit are concerned, I do not want to enter into the merits of those findings since the substantial appeal filed against the said judgment and decree of the trial court is pending before the Lower Appellate Court. The Lower appellate court has rightly rejected the application at exh.5. No interference required. Hence, following order.

ORDER

1. Appeal is hereby dismissed.
2. In the circumstances, the appellate Court is hereby directed to dispose off the pending appeal as expeditiously as possible, preferably within a period of **three months** after preparation of the paper book.

3. At this stage, the learned counsel for the appellant submits that status-quo order may be continued till the order is uploaded. However, I am not inclined to accept this request for the reason that the lower appellate Court has been directed to dispose of the appeal within a particular time and as such, there is no question of continuing the status-quo order till the order is uploaded. Request stands rejected.

4. Pending civil application/s also stand disposed of.

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(V.K. JADHAV, J.)

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