

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

**APPEAL FROM ORDER NO.210 OF 2015
WITH
CIVIL APPLICATION NO.270 OF 2015
IN
APPEAL FROM ORDER NO.210 OF 2015**

Namdeo Rama Bhagat

...Appellant

Versus

Smt. Banu Shafique Hasan Shalee &
Ors.

...Respondents

.....

Mr. R.S. Apte, senior counsel with Mr. Ketan Dhavale for the
Appellant.

Mr. Sumeet Kothari for the Respondent No.9.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28th JUNE, 2017.**

P.C.:-

1. Respondent No.9 waives service. None present for Respondent Nos.1 to 8 though duly served. By consent of the Appellant and Respondent No.9 the appeal is taken up for final hearing at the stage of admission.

2. The appellant was the plaintiff and the respondents were the defendants in the suit and shall be hereinafter referred to as the plaintiff and the defendants.

3. The plaintiff has challenged the order dated 12th January, 2015, whereby the learned Addl. Civil Judge, Senior Division, Panvel, dismissed the application for temporary injunction filed by him in Special Civil Suit No.123 of 2011.

4. It is not in dispute that the defendant Nos.1, 2, 8 and one Mrs. Shabana Khan (deceased) were the owners of the suit property, which is more particularly described in paragraph 1 of the plaint. The case of the plaintiff is that by agreement dated 4th December, 2006 the defendant Nos.1, 2, 8 and Shabana had agreed to sell the suit property to him for total consideration of Rs.42,00,000/-. The said agreement was signed by the defendant No.2 on behalf of the other co-owners viz. defendant Nos.1, 8 and Shabana. The plaintiff claims that out of total sale consideration he had paid sum of Rs.4 lakhs to the defendant Nos.1 and 2 as on the date of execution of the said agreement. The plaintiff claims that he has paid an amount of Rs.22,05,000/- to the defendant Nos.1, 2, 8 and Shabana on various occasions.

5. The plaintiff has alleged that on 8.9.2008 and 15.9.2008 said Shabana and defendant No.8 had executed a power of attorney in favour of defendant No.2. Said Shanana expired on 4.1.2009. The

defendant Nos.3 to 7 are the legal representatives of said Shabana. The grievance of the plaintiff is that the defendant No.9 by taking undue advantage of the power of attorney allegedly executed in his favour by the defendant Nos.1, 2, 8 and Shabana, executed a sale deed dated 4.12.2009 in respect of the suit property in his favour. The plaintiff has stated that said Shabana had already expired as on the date of execution of the said sale deed and the Power of Attorney, if any, in favour of the defendant No.9 had come to an end. The plaintiff claims that the defendant No.9 suppressed the said fact and made a false statement that all the parties to the power of attorney were alive on the date of execution of the sale deed.

6. The plaintiff claims that in view of the agreement of sale dated 4.12.2006 and having received part of the sale consideration, the defendant Nos.1, 2 and 8 could not have sold the suit property to the defendant No.9. The plaintiff therefore claim that the said sale deed is null, and ab initio void.

7. The defendant Nos.1 and 2 have denied having entered into any agreement with the plaintiff. They have further claimed that they did not intend selling the suit property to the plaintiff. These

defendants have stated that one Dr.Manish Patil had approached the defendant No.2 and expressed his desire to purchase the suit property. The defendant No.2 had informed Dr.Manish that he would enter into such agreement subject to the other co owners consenting for the same. These defendants have stated that on 4.12.2006 Dr.Manish had obtained their signature on a blank stamp paper. They have denied having executed any agreement in favour of the plaintiff and have stated that the plaintiff is claiming a right to the property on the basis of a fabricated agreement.

8. The defendant No.8 has stated that she had never intended to sell the suit property. She has also denied having executed any power of attorney in favour of the defendant No.2, to enter into any transaction in respect of the suit property on her behalf. She has denied having received any money and further having issued any receipt in favour of the plaintiff or any other person. The defendant No.8 further claimed that in fact she intended purchasing the share of the co-owners and talks with the co-owners in this regard were in progress. She has stated that she has already lodged the complaint against the defendant No.2 for cheating and misrepresentation. She had also issued a notice to the plaintiff and had cancelled the

agreement for sale. She had stated that she has not executed any sale deed in favour of any person.

9. The defendant No.9 claims that the suit property was owned by defendant No.1, 2 and 8 and Shabana. The defendant Nos. 8 and Shabana had executed a power of attorney dt. 8.9.2008 and 15.9.2008 in favour of the defendant No.2. On the basis of the said Power of attorney, the defendant No.1 and the defendant No.2 on behalf of himself and as a power of attorney of the defendant Nos.8 and Shabana executed an agreement for sale dated 26.9.2008 in respect of the suit property. The defendant No.9 has stated that he had already paid the entire sale consideration at the time of the execution of the power of attorney and the agreement for sale. He has stated that on the date of the execution of the sale, he was not informed about the death of Shabana. The defendant No.9 claims that he is already in possession of the suit property by virtue of the sale deed dated 4.12.2009.

10. I have perused the records and considered the submissions advanced by the learned senior counsel for the plaintiff as well as the learned counsel for the defendants.

11. It is not in dispute that the suit property was owned by the defendant No.1- Banu Shafique Hasan Shalee, defendant No.2-Ashfaq Hasan Shafique Shalee and defendant No.8- Smt. Rizwana alias Sneha Satish Dhanuka and one Shabana. Said Shabana has expired and the defendant Nos.3 to 7 are the legal representatives of the said Shabana. The plaintiff claims right to the suit property by virtue of an agreement dated 4th December, 2006. A perusal of the said agreement shows that same was signed only by the defendant No.2. Other co-owners of the suit property were not signatories to the said agreement. The power of attorney dated 8th September, 2008 executed by the defendant No.1 as well as the power of attorney dated 15.9.2008 executed by the defendant No.8 in favour of the defendant No.2 was subsequent to the agreement of sale dated 4th December 2006. It is thus, evident that as on the date of execution of agreement of sale, the defendant Nos.1 and 8 and Shabana had not authorised the defendant No.2 to enter into any agreement in favour of the plaintiff on their behalf. The power of attorney which was executed subsequently does not make any reference to the agreement dated 4th December, 2006 and does not seek to rectify any acts done by the defendant No.2 on their behalf, prior to the execution of the said power of attorney. The records thus,

prima facie indicate that the defendant Nos.1,8 and Shabana were not parties to the agreement dated 4th December 2006 and consequently, the plaintiff cannot seek any relief against these defendants on the basis of the said agreement.

12. It is also pertinent to note that the defendant No.9 herein claims to have purchased the property from the original owners by virtue of sale deed dated 4th December, 2009. It is pertinent to note that the said sale deed was executed by the defendant No.9 in his favour as a power of attorney of defendant Nos.1 ,2,8 and Shabana. The power of attorney dated 26th September, 2008 indicates that the same was executed by defendant Nos.1 and 2 in favour of defendant No.9. Neither Shabana nor Rizwana (Defendant No.8) were signatories to the said power of attorney. Though the power of attorney was allegedly executed by the defendant Nos.1 and 2 on their own behalf and also on behalf of defendant No.8 and Shabana, there is no prima facie material on record to indicate that Shabana and Rizwana (Defendant No.8) had in fact executed any power of attorney in favour of the defendant Nos.1 and 2 and that they had authorized them to sub delegate the powers to the defendant No.9 or any other person. In the absence of such authorization the defendant Nos.1 and 2 could not

have sub delegated the powers or executed a power of attorney on behalf of the defendant No.8 and Shabana .

13. It is also pertinent to note that the defendant No.8 and Shabana were not parties to the Agreement to sale dated 26th September, 2008. Hence, they were not bound by the terms of the said agreement. Another important feature which needs to be noted is that the sale deed dated 4th December 2009 mentions that none of the parties to the sale deed had expired when in fact Shabana had already expired on 4th January, 2009. This is yet another factor which prima facie casts a doubt on the genuineness of the sale deed.

14. It is also pertinent to note that by notice dated 29th May, 2010 the defendant No.8 had brought to the notice of the plaintiff that she was not a signatory to the agreement dated 4.12.2006 and that the terms of the said agreement were not acceptable to her. The notice clearly states that the defendant No.8 was not in need of money and had sought to terminate the agreement executed in favour of the plaintiff.

15. The said notice which was issued prior to the execution of the sale deed dated 4th December 2009, clearly indicates that the

defendant No.8 was not in financial need and had no intention of selling the suit property. This fact, prima facie indicates that as on the date of the said notice, the defendant No.8 -Rizwana was not aware of the execution of the sale deed dated 4th December, 2009 in favour of the defendant No.9. The records thus prima facie reveal that the agreement in favour of the plaintiff as well as the sale deed in favour of the defendant No.9 are sham and fabricated documents .

16. In normal circumstances, failure to establish prima facie case would entail dismissal of the application for injunction or dismissal of the appeal arising from the order of dismissal of the application, without passing any further order in the matter. This general or routine course needs to be deviated considering the fact that the defendant No.9 is also claiming right to the suit property on the basis of a sham document. Hence, in the interest of justice and in order to protect and safe guard the rights of the owners till final adjudication, it is just and proper that the subject matter of the suit is maintained in status quo.

17. In view of the peculiar facts and circumstances of the present case, the plaintiff as well as defendant No.9 are directed to

maintain status quo in respect of the suit, and further not to change the nature of the suit property in any manner. The plaintiff as well as the defendant No.9 shall not alienate, transfer or create third party interest in respect of the suit property till the disposal of the suit.

18. The Appeal from Order stands disposed of in above terms.

19. In view of disposal of the Appeal from Order, the Civil Application does not survive and hence disposed of.

(ANUJA PRABHUDESSAI, J.)