

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.619 OF 1994
WITH
CIVIL APPLICATION NO.6404 OF 1994
WITH
CIVIL APPLICATION NO.227 OF 2017

Mrs. Kusum Bhalchandra Panchikar
About 53 years, Occ.: Household,
Residing at Sativa Apartment,
Ram Nagar, Dombivli (East).

.... Appellant

Vs.

Mr. Dattatray Narayan Kale
Since deceased by his LRs

- 1 Mrs. Asha Dattatraya Kale
- 2 Mr. Sanjay Dattatraya Kale
- 3 Vijaya Dattatraya Kale
- 4 Prashant Dattatraya Kale
- 5 Smita Dattatraya Kale
- 6 Mr. Parag Dattatraya Kale
- 7 Rashmi Dattatraya Kale
- 8 Trupti Dattatraya Kale

Nos. 1, 2 & 4 to 8 Residing at
Ushakiran Building, Opp. Badlapur Railway
Booking Office, Station Pada, Kulgaon,
Near Badlapur Railway Station,
Taluka Ulhasnagar, Dist. Thane

No. 3 Residing at Katrap Road,
Wankhade Building, Katrap,
Post Kulgaon, Tal. Ulhasnagar,
Dist. Thane

(Vide Court's order dated 28.2.97,
Amendment carried out in C.A.
No.2911/94 in S.A. No. 619/94)

.... Respondents
(Original Plaintiffs)

Ms. Sharmila Deshmukh for the Appellant and Applicant in CA No.6404 of 1994.

Mr. Sagar Joshi i/by S.M. Oak for Respondent Nos. 1 to 4 and for Applicant in CA No.227 of 2017.

Coram : N.M. Jamdar, J.
Date : 20 April 2017

ORAL JUDGMENT :

This appeal is filed by the original defendant in the Regular Civil Suit No. 43 of 1984 filed by the Respondent-Plaintiff.

2 The Respondent filed a Regular Civil Suit No. 43 of 1984 seeking specific performance of the agreement dated 23 April 1982, entered into between the parties in respect of sale of the suit property. The learned Civil Judge, by the judgment and order dated 31 July 1991 partly decreed the suit. The learned Civil Judge granted the claim of the Respondent in terms of money, however, refused specific

performance. The Appeal bearing No. 259 of 1991 was filed by the Respondent-Plaintiff in the District Court, Thane. The learned District Judge, by judgment and order 15 March 1994 allowed the appeal and directed the Appellant to execute a sale-deed in favour of the Respondent.

3 The present Second Appeal was thereafter filed and it was admitted on 1 December 1994. Civil Application No.1940 of 1996 was filed by the Appellant seeking stay of the impugned judgment and order passed by the learned District Judge. In the Civil Application following order was passed on 4 July 1996.

“Rule returnable forthwith.
Mr. A.S. Oka waives service.

The Second Appeal is arising from the judgment and decree dated 15.09.1994 has already been admitted and for the reasons stated in the application, I am satisfied that prayer in terms of clause (a) deserved to be granted.

Accordingly the Respondent is restrained from creating any third party interest of whatever nature in respect of suit property during the pendency of the appeal.

Civil Application stands disposed of.

4 The learned counsel for the Appellant sought to urge various contentions on merits, however, the learned counsel for the

Respondent pointed out that the Civil Application No. 227 of 2017 is filed in this Second Appeal seeking to dismiss the Second Appeal on the ground that the Appellant has violated the order passed on 4 July 1996 in Civil Application No. 1940 of 1996. The Respondents have placed on record that the Appellant has transferred the rights in the suit property on 22 March 2013. Documentation to that effect annexed, and also a development agreement. Reply affidavit has been filed to this Civil Application. Perusal of the reply shows that factum of selling the property has not been denied. The reason given is of the ill-health and ignorance of the Appellant. In the affidavit itself she has stated that she has acted on the behest of her family members.

5 The action of the Appellant in selling the property is in clear breach of the order dated 4 July 1996, which mandate the Appellant not to create third party rights of whatsoever nature in respect of the suit property. There is absolutely no reference to this order in the sale-deed. It cannot be believed that the Appellant and her family members were not aware of the litigation. The litigation regarding suit property is pending since the year 1984. The District Court had passed an order against the Appellant and thereafter the Second Appeal is filed. The actions of the Appellant are brazen, including of those who have sought to benefit from these actions.

6 The Appellant is in clear breach of the order of this court. Further since the Appellant has admittedly divested herself of the title of the suit property, there is no need to hear the appeal further at the behest of the Appellant. Till date no intervention application is also filed. The sale-deed executed by the Appellant in favour of the third parties is in clear violation of the order of the Court and no rights will flow to the parties therefrom. The Civil Application No. 227 of 2017 is filed in January 2017.

7 Thus the challenge to the impugned Judgment at the behest of the Appellant, need not be heard. Secondly, creation of any third party rights by the Appellant in brazen contravention of the orders of the Court will confer no title and no rights will flow therefrom. The appeal is pending since 1994, no intervention application is filed to demonstrate any right in the Suit Property or any defence. The Second Appeal is accordingly dismissed.

8 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed of.

(N.M. Jamdar, J.)