

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO.409 OF 2017****WITH****CIVIL APPLICATION NO.531 OF 2017****IN****APPEAL FROM ORDER NO.409 OF 2017**

Diana Infrastructure Limited and Anr. ...Appellants

Versus

Maya Kakamlul Shishve and Ors. ...Respondents

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Mr.Viraj Tulzapurkar Senior Advocate a/w Ms.Nanki Grewal
a/w Mr.Denzil Arambham for the Appellants

Mr.Rajesh B.Parab for the Respondent Nos.1 and 2

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CORAM : SMT. ANUJA PRABHUDESSAI, J.**DATED: 5th July, 2017.****P.C.:-**

1. With consent of the parties, this Appeal from Order is taken up for final disposal at the stage of admission.
2. The Appellants, who are the Defendant Nos.3 and 2 in Special Civil Suit No.167 of 2013 have challenged the order dated 13th April,2017, whereby the learned Civil Judge Senior Division, Panvel has granted the application for temporary injunction filed by the Respondent Nos.1 and 2 and thereby restrained them from undertaking any act of development or

construction in the suit property and not creating any third party interest in the suit property till final disposal of the suit.

3. The Respondent Nos.1 and 2 were the Plaintiffs, the Respondent No.3 was the Defendant No.1 and the Appellants were Defendant Nos.3 and 2 in Special Civil Suit No.167 of 2013. For the sake of convenience, they will be referred to as per their status in the suit.
4. The subject matter of the dispute is the property surveyed under survey No.82 Hissa No.1 and Survey No.83 Hissa No.6 situated at village Kon,Tq.Panvel, Zilha Parishad Raigad, Maharashtra. The said property shall be hereinafter referred to as the 'suit property'.
5. The case of the Plaintiffs is that they are the owners of the suit property. They intended to sell the suit property to the Defendant No.1. The Plaintiffs have stated that they had agreed to sell the suit property admeasuring 27 Gunthas at the rate of Rs.2,60,000/-per guntha. The Plaintiff claimed that some time in the month of June, 2007, the Defendant No.1 brought a stamp

paper and obtained their signature and asked them to affix their photographs on the said papers. The Plaintiffs claim that they were informed that the same was required for filing proceedings in the revenue office to obtain permission in respect of the sale of the property. The Plaintiffs have alleged that they later learnt that the Defendant No.1 had defrauded them and in fact had used the said signed stamp papers to create a false power-of-attorney. The Plaintiffs alleged that on the basis of the said power- of- attorney the Defendant No.1 executed a sale deed and transferred the suit property in his favour. The Plaintiffs claimed that they had neither executed any power- of- attorney in favour of the Defendant No.1 nor agreed to sell the suit property. The Plaintiffs claim that the said power-of-attorney and sale deed are forged and fabricated. The Plaintiffs therefore, filed a suit for declaration and consequential reliefs.

6. During the pendency of the suit the Plaintiffs impleaded Defendant Nos.2 and 3, who had purchased the suit property from the Defendant No.1 by deed of sale dated 18.06.2009. The Plaintiffs alleged that the Defendant No.3 had undertaken construction in the suit property. The Plaintiffs therefore, filed an

application for temporary injunction and sought to restrain the Defendant No.3 from carrying out construction in the suit property and from transferring, alienating or creating third party interest in respect of the suit property.

7. The defence of the Defendant No.2 and 3 is that the Plaintiffs had executed a power-of-attorney in favour of the Defendant No.1 and sold the suit property to the Defendant No.1 by sale deed dated 18th June, 2009. The Defendant No.2 had purchased the suit property from the Defendant No.1 by sale deed dated 10th March, 2010. Upon execution of the said sale deed the Defendant No.2 was put in possession of the suit property and that they developed the suit property along with adjoining properties. The Defendant No.2 sold the suit property to the Defendant No.3 by two sale deeds both dated 25th March, 2015. The Defendants have stated that they are bonafide purchasers for value and that they have developed the suit property. It is alleged that the Plaintiffs had not sought any relief against them despite being aware of the said transfer and development. The Defendants contend that grant of interim relief would infringe their proprietary rights.

8. The learned Trial Judge whilst granting the application for temporary injunction has held that the entire controversy revolves around the genuineness of the power-of-attorney and the sale deed, which is stated to have been executed by the Plaintiffs in favour of the Defendant No.1. The learned Judge after considering the contentions raised by both the parties held that the Plaintiffs had prima facie proved that the Defendant No.1 had got the said Power-of-Attorney and sale deed executed in his favour without any authority. The learned Judge further held that there was no transfer of title in favour of the Defendant No.1 and consequently the Defendant No.1 could not have transferred the property in favour of the Defendant No.2. The learned Judge therefore held that all subsequent sale deeds are 'meaningless'. The learned Judge therefore, held that the Plaintiff had established prima facie case and granted the relief as prayed.

9. Heard Mr.Tuljapurkar, the learned Senior Counsel for the Appellants/Defendant No.2 and 3 and Mr.Rajesh B.Parab the learned Counsel for the Respondent Nos.1 and 2/Plaintiffs. I have perused the records and considered the submissions

advanced by the learned Counsels for the respective parties.

10. The records prima facie reveal that the Defendant Nos.2 and 3 are claiming right to the property through Defendant No.1. It is not in dispute that the Defendant No.1 was not served in the matter, despite which the learned Judge has given findings that the Defendant No.1 had got the said sale deed executed in his favour without having any valid authority. The learned Judge has also held that there was no transfer of title in favour of the Defendant No.1 and as such he could not have sold the property to the Defendant No.2 and 3. Needless to state that no adverse findings could have been rendered against the Defendant No.1 without hearing him in the matter. On this ground alone the impugned order is liable to be set aside, without going in to the merits of all other contentions raised by the learned Counsels for the respective parties.

11. At this stage, the learned Senior Counsel for the Defendant No.3 has made a statement that without prejudice to the rights and contentions, the Defendant No.3 will not alienate, transfer or create any third party rights in respect of the construction in

the suit property, till the disposal of the application for temporary injunction and that he will not claim any equity in respect of the construction undertaken during the pendency of the application for injunction. Statement is accepted.

12. Under the circumstances and in view of the discussion supra, the Appeal from Order is allowed and the impugned order dated 13th April, 2017 is set aside. The matter is remitted to the Trial Court with directions to decide the application for temporary injunction (Exh.5) afresh after hearing the Plaintiffs and all the Defendants. The Application for injunction shall be disposed of as expeditiously as possible and in any event within three months from the receipt of the order.

13. In view of the disposal of the Appeal, the Civil Application does not survive and hence the Civil Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)