

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 35 OF 2015**

BN Maheshwari ...Appellant
Versus
SM Parekh & Ors ...Respondents

AND

APPEAL FROM ORDER NO. 157 OF 2015

PB Maheshwari ...Appellant
Versus
SM Parekh & Ors ...Respondents

AND

APPEAL FROM ORDER NO. 173 OF 2015

Sweta Rele & Anr ...Appellants
Versus
SM Parekh & Ors ...Respondents

AND

APPEAL FROM ORDER NO. 441 OF 2015

Jayashri Rele & Anr ...Appellant
Versus
SM Parekh & Ors ...Respondents

Mr RD Soni, with S Shamim, i/b Shamim & Co., for the Appellant.

Mr Mayur Khandeparkar, i/b Mehul Shah, for Respondent No. 3.

CORAM: G.S. PATEL, J

DATED: 19th July 2017

PC:-

1. This is a group of four appeals. For the purposes of this order, the facts are taken from appeal from order No. 35 of 2015.
2. The appeal is directed against an order dated 3rd July 2014 dismissing the plaintiff's Notice of Motion for interim relief. The plaintiff entered into an agreement of sale of immovable property, specifically Flat No. 31 on the third floor in a proposed building called Laxmi to be constructed by Defendant No. 4 on CTS Nos. 232 and 233, Jeevan Vikas Kendra Road, Andheri (East), Mumbai. The agreement is dated 26th November 1988, i.e., about 21 years before the plaintiff brought suit. The plaintiff claims to have paid substantially the entire consideration.
3. There are very many difficulties in Mr Soni's way on behalf of the appellants, not least of which is that several prayers in this plaint, except prayer clause (a), have been deleted. This seeks only a declaration that the agreement of 1988 is valid, subsisting and binding and constitutes a charge in favour of the plaintiff on the property in question, and that too only to the extent of the flat sought to be purchased. The first portion for a declaration simpliciter without anything further and with no leave sought under Order II Rule 2 of the Code of Civil Procedure 1908 is already on unstable ground. The second portion is unclear in its foundation.

Both will have to be considered by the Trial Court on merits at the final disposal of the suit.

4. The question is whether in the meantime the plaintiff is entitled to any interim injunctive relief. It is not in dispute that one of the two plots, i.e., plot no. 232 was purchased by defendants nos. 1 and 2 in an auction from the MCGM. This was because there were arrears of property tax in respect of that flat. The next plot, CTS No. 233 was directly purchased by defendant No. 3, who then purchased the first plot CTS No. 232 from the auction purchasers, defendants nos. 1 and 2. The plaintiff's argument was that the obligations of the original vendor — defendant no. 4 — carried through to defendant no. 3 once he acquired the two plots. This does not, in my view, significantly assist the plaintiff because it does not explain the extraordinary delay and there may well be an issue of limitation to be addressed in regard to a suit framed in this fashion. The trial court, in my view, correctly concluded that there was no question of the balance of convenience being with the plaintiff or of a *prima facie* case being made out. There was no explanation at all worthy of note for this extraordinary delay of over two decades.

5. In the meantime, the suit by defendant no. 4 against the original owner, one Laxmishankar Chandaka Tiwari, for specific performance of even an earlier contract dated 4th May 1985 was dismissed. Mr Soni says that it was dismissed in default. That, in my view, makes no difference at all.

6. In short, the plaintiff claims specific performance after 21 years of an agreement with defendant no. 4; whose own suit for specific performance of an agreement to acquire the land itself failed. Thus, defendant no.4 did not have the land on which to construct the building in which he had allegedly agreed to provide a flat to the plaintiff. It is for this reason that the plaintiff seeks to visit these responsibilities on others who then acquired title. Defendant no.3, who now owns the two plots, did not acquire either from defendant no. 4. He got one in a MCGM auction sale, and the other from defendants nos. 1 and 2. Defendant No.4 had no title at all to pass to any one, his own suit for specific performance having failed.

7. In this scenario, had it granted any sort of injunction, the Trial Court would have been utterly in error. The impugned order is unexceptionable and calls for no interference at all. The plaintiff's motion had to fail.

8. The suit has been pending since 2009. I am told that it was actually dismissed against some of the defendants but has been since restored (after the impugned order). The pleadings are said to be now complete; but I am now informed that there is a pending chamber summons filed by the plaintiff for amendment. That chamber summons will need to be decided first. If that chamber summons is allowed, and the trial court is requested to take up at its earliest, then obviously the defendants will be entitled to file supplementary written statements.

9. The trial court is, therefore, requested to first dispose of the chamber summons and then, after allowing reasonable time for filing supplementary written statements, but without extensions, list the matter for framing issues and then to set a schedule for evidence and trial such that, to the extent possible, the trial is completed by December 2018.

10. Parties will appear before the trial court on 11th August 2017 with an authenticated copy of this order to obtain appropriate directions.

11. All the appeals from order are disposed of in these terms. There will be no order as to costs.

12. It is clarified that I have expressed no opinion whatsoever on the merits of the chamber summons. The chamber summons will be decided on its own merits.

(G. S. PATEL, J)