

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

**APPEAL FROM ORDER NO.997 OF 2014
WITH
CIVIL APPLICATION NO.1213 OF 2014
IN
APPEAL FROM ORDER NO.997 OF 2014**

Linit Krishna Patil	...Appellant
Versus	
Prakash Chandrasen Patil and Ors.	...Respondents

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Mr.Yusuf Iqbal Yusuf a/w Mr.Veville Majra i/b
M/s.S.N.Vaishnawa & Co. for the Appellants
Mr.Chirag Modi a/w Mr.Deepak Shukla i/b Ms. Viond Mistry Co.
for the Respondent Nos.1,2 and 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st JUNE, 2017.

P.C.:-

1. The Appellant, who is the Plaintiff in Special Suit No.61 of 2014, has challenged the order dated 24th July, 2014 whereby, the learned Civil Judge Senior Division, Alibaug dismissed the application for temporary injunction.
2. For the sake of convenience, the parties to these proceeding will be referred to as their original status in the suit.
3. In order to appreciate the controversy, it is necessary to state to the relevant facts. The dispute relates to the property under survey No.56 Hissa No.7 and 55 Hissa No.7/2 situated at Rajankhar Davali, Alibaug. The said

property shall be hereinafter referred to as the suit property. The suit property was originally owned by Bhagirathi Bai, the grandmother of the Plaintiff. Upon the death of said Bhagirathibai the property devolved upon her legal representatives. The Plaintiff and the Defendant Nos.1 to 5 are the legal representatives of said Bhagirathbai. The Plaintiff therefore, claims to be one of the co-owners of the suit property.

4. The Plaintiff claimed that his father alongwith his two other uncles had entered a MOU dated 24.08.2006 with M/s Midas group for the development of the suit property. Due to some differences between the parties it was decided to cancel the said MOU. The Plaintiff claimed that his father and uncles had signed the Power of Attorney in favour of the Defendant No.1, with a specific understanding that the said Power of Attorney would be used only for cancellation of the MOU dated 28th April,2007. The Defendant No.1 executed a deed of cancellation in respect of the MOU dated 28th April,2007. The grievance of the Plaintiff is that the Defendant No.1 in collusion with the Defendant Nos.6 and 7 misused the said Power of Attorney and executed a deed of sale dated 22.01.2008 in favour of the Defendant Nos.6 and 7. The Plaintiff has further claimed that the Defendant Nos.1 to 3 and the father of Defendant No.4 had obtained the signature of his father on a partition deed dated 16.09.2011 by misrepresenting to him that his signature was required to complete certain formalities for the inclusions of their names in 7/12 extract. The Plaintiff

claims that his father had not received any consideration towards the sale of suit property and that the sale deed and the partition deed are sham and bogus. The Plaintiff therefore, filed the suit for declaration and other consequential reliefs. The Plaintiffs also filed an application for temporary injunction seeking to restrain the Defendants on acting on the said sale deed, disturbing his possession in respect of the suit property and from transferring, alienating or creating third party rights in respect of the Suit property.

5. The Defendant Nos.1,2 and 4 have denied that the Power of Attorney was executed for the specific purpose of cancelling the MOU. These Defendants have claimed that the sale deed was executed during the life time of the father of the Plaintiff and that as on the date of the execution of the said sale deed the Plaintiff had no right to the suit property. The Defendants have stated that the father of the Plaintiff had never objected to the execution of the said sale deed and partition deed. The Defendants have stated that the Plaintiff was also well aware about the execution of the sale deed and partition deed and that his statement that he had derived knowledge about the same only in the year 2013 is patently a false statement.

6. The Defendant Nos.6 and 7 have claimed that they have purchased the property on payment of Rs.39,16,000/- . These Defendants have stated that

they are the bonafide purchasers for value. These defendants have submitted that they are in possession of the suit property and that their names are also recorded in 7/12 extract in respect of the suit property. These Defendants have stated that grant any injunction will adversely affect their proprietary rights.

7. The learned Trial Judge after considering the material on record, has held that the father of the Plaintiff had not objected to the execution of the sale deed and on the contrary had received part consideration in respect of the suit property. The learned Trial Judge therefore, held that the Plaintiff had failed to establish prima facie case. The learned Judge further held that the Defendant No.6 and 7 have purchased the property and that irreparable loss will be caused to these Defendants by grant of interim relief as prayed. The learned Judge therefore, dismissed the application for temporary injunction. Being aggrieved by the said order the Plaintiff has preferred this appeal.

8. Mr.Yusuf Iqbal Yusuf, the learned Counsel for the Appellant has submitted that the suit property was originally owned by Bhagirathibai. The Plaintiff is one of the co-owners of the suit property. The leaned counsel contends that the father of the Plaintiff had executed a power of attorney in favour of the Defendant No.1. for a specific purpose of cancelling MOU with M/s Midas Group. The Defendant No.1 misused the

said power of attorney and executed a sale deed in favour of Respondent Nos.6 and 7. The learned Counsel contends that the fact that the Defendant No.1 had cancelled the MOU on the basis of said Power of Attorney prima facie indicates that the said Power of Attorney was executed in favour of the Defendant No.1 only for the said purpose and not for transferring the suit property. The learned Counsel for the Plaintiff has further urged that the fact that the father of the Plaintiff was paid only an amount Rs.1,50,000/- from the total consideration of Rs.39,16,000/- itself indicates that a fraud has been played on the father of the Plaintiff. He has submitted that even the amount of Rs.1,50,000/- was not received by the father of the Plaintiff and that he was not aware of the execution of the sale deed as well as the partition deed. He has submitted that the learned Trial Judge failed to appreciate that the sale deed as well as partition deed was a sham and bogus document and were executed by the Defendant No.1 in collusion with the Defendant Nos.2,3 and the father of the Defendant No.4.

9. Mr.Chirag Modi the learned Counsel for the Respondents has submitted that the power of attorney was executed in the year, 2007 and the sale deed was executed in the year, 2008. He submits that the contention of the plaintiff that he had learnt about the said transaction in the year, 2013 cannot be believed. He has submitted that the Plaintiff has approached the court after a considerable delay and hence is not entitled for any equitable relief .

10. The learned counsel for the Respondent has submitted that the power of attorney in favour of the Defendant No.1 was not for a specific purpose but was a general power of attorney. He has further submitted that on the basis of the said power of attorney the Respondent No.1 had executed a sale deed in favour of the Respondent No.6 and 7. The learned Counsel for the Respondent has further submitted that the sale deed was executed during the life time of the father of the Plaintiff. The said sale deed clearly indicates that the father of the Plaintiff had received Rs.1,50,000/- towards consideration and this fact clearly indicates that the father of the Plaintiff was aware of the said sale transaction as well as the execution of the deed of Partition. He has submitted that the Plaintiff has prima facie failed to prove that the said sale deed as well as the Partition deed are sham and bogus. The learned counsel for the Respondents further submits that the Respondent No.6 and 7 being bonafide purchasers cannot be restrained from possessing and enjoying the property purchased by them for value.

11. I have considered the submissions advanced by the learned counsels for the respective parties. It is not in dispute that the suit property was originally owned by Bhagirathibai. Upon the death of Bhagirathibai the property devolved upon her sons Krishna Patil ,Chandrasen Patil, Baliram Patil and Dattatraya Patil (Defendant No.5). The Plaintiff is the son of Krishna Patil whereas, the Defendant Nos.1 to 3 are the legal representatives of Chandrasen Patil . The plaintiff therefore, claims that he is one of the co-

owners of the suit property which was originally owned by Bhagirathibai.

12. It is also not in dispute that the father of the Plaintiff had executed a general power of attorney in favour of the Defendant No.1. On the basis of said Power of Attorney, the Defendant No.1 has executed a sale deed in favour of the Defendant No.6 and 7. Perusal of the said Power of attorney clearly indicates that the said power of attorney was not a special power of attorney executed specially for the purpose of cancelling the MOU but was a general Power of attorney whereby the Defendant No.1 was given all powers including the power to sell and transfer the property. It is pertinent to note that the Plaintiff had signed the said power of attorney as a witness thereof. The Plaintiff was therefore, well aware of the contents of the said power of attorney. Hence the Plaintiff cannot be heard to say that the Power of Attorney was executed in favour of the Respondent No.1 only for a specific purpose of cancelling the MOU with M/s Midas Group.

13. It is not in dispute that the said sale deed was executed by the Defendant No.1 during the lifetime of the father of the Plaintiff. Perusal of the said sale deed indicates that the father of the Plaintiff had received Rs.1,50,000/- as consideration. The fact that the father of the Plaintiff had received Rs.1,50,000/- as consideration prima facie proves that the father of the Plaintiff was aware of the sale transaction. The father of the Plaintiff had not objected to the execution of the said sale deed and this fact negates the

contention of the Plaintiff that the Respondent No.1 had executed the said sale deed by misusing the power of attorney. The Plaintiff has therefore, prima facie failed to establish that the sale deed is sham and bogus. The property was already sold during the lifetime of the father of the Plaintiff. The Plaintiff had no right to the said property as on the date of the execution of the sale deed. Consequently, the learned Judge was justified in holding that the Plaintiff had prima facie failed to prove his right, title or interest in respect of the suit property.

14. It is also pertinent to note that the father of the Plaintiff was also a party to the Partition deed executed on 16/09/2011. The names of the Defendant Nos.6 and 7 have been recorded in 7/12 extract in respect of the suit property. The Plaintiff has claimed that the signature of his father was obtained on the said partition deed by misrepresenting that the same was required for including the names of the legal representatives of Chandrasen Patil in the survey records, However there is no prima facie material to substantiate the said contention and or to indicate that the said partition deed is sham and bogus.

15. Considering the above circumstances, in my considered view, the learned Trial Court was justified in holding that the Plaintiff/Appellant had failed to establish the prima facie case.

16. It is also pertinent to note that the Respondent Nos.6 and 7 had purchased the said property in the year, 2008 for consideration of Rs.39,16,000/-. These Respondents who are bonafide purchasers are in possession of the said property since the date of the sale. Under such circumstances, the learned trial judge was justified in holding that granting relief as claimed by the Appellant would cause greater hardship to the Respondent No.6 and 7, than that which is likely to cause to the Plaintiff.

17. In my considered view, the impugned order is neither perverse nor arbitrary. Considering the above facts and circumstances and the limited scope of Order 43 R 1 ® of Civil Procedure Code, there is no justifiable reason to interfere with the order. Hence, Appeal has no merit and is hereby dismissed.

18. Needless to state that findings recorded at interlocutory stage are tentative in nature and cannot affect the decision on the merits.

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

(ANUJA PRABHUDESSAI, J.)