

Anand

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

**WRIT PETITION NO.12571 OF 2016
WITH
WRIT PETITION NO.12572 OF 2016
WITH
CIVIL APPLICATION NO.461 OF 2017
IN
WRIT PETITION NO.12571 OF 2016**

M/s. Divyaraj Properties

.Petitioner

Vs.

Harishchandra Mankya Wade & ors.

.Respondents

Mr.R.P.Joshi ib. M/s. R.P.Joshi & Co., Advocate, for the Petitioner

Mr. Rohan Sawant i/b. Mr. S.S.Gawde, Advocate, for the Respondents
No.1 & 2

CORAM : R.G.KETKAR, J.

DATE : 08.03.2017

P.C.

. Not on board. At the request of Mr. Joshi, taken up in the
production board.

2. Heard Mr. Joshi, learned counsel for the Applicant and
Mr. Sawant, learned counsel for the Respondents No.1 & 2 in both the
Petitions at length.

3. Mr. Joshi seeks leave to delete rest of the Respondents on the ground that the Respondents No.1 & 2 are the only contesting Respondents. In view thereof, on the oral Application made by Mr. Joshi, leave to delete rest of the Respondents is granted. Amendment shall be carried out forthwith. Rule. Mr. Sawant waives service on behalf of the Respondents. Having regard to the narrow controversy raised in these Petitions as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

4. Writ Petition No.12571 of 2016 is directed against the Judgment and Order dated 18.08.2016 passed by the learned C.J.S.D., Palghar below Exh.29 in Spl. Civil Suit No.19 of 2016. By that Order, the learned trial Judge rejected the Application made by the Petitioners, hereinafter referred to as "Plaintiffs" for permission to deposit Rs.42,08,064/- in the Court. Mr. Joshi states that the Petitioners are restricting their challenge only in respect of rejection of prayer clause (a) of the Application Exh.29. Statement made by Mr. Joshi is accepted.

5. Writ Petition No.12572 of 2016 is directed against the Judgment and Order dated 18.08.2016 passed by the learned C.J.S.D.,

Palghar below Exh.25 in Spl. Civil Suit No.18 of 2016. By that Order, the learned trial Judge rejected the Application made by the Petitioners, hereinafter, referred to as “Plaintiffs” for permission to deposit Rs.1,14,01,936/- in the Court. Mr. Joshi states that the Petitioners are restricting their challenge to rejection of prayer clause (a) of the Application. Statement made by Mr. Joshi is accepted.

6. Insofar as Writ Petition No.12571 of 2016 is concerned, Mr. Joshi submitted that out of total consideration of Rs.1,23,48,040/-, the Plaintiffs have paid Rs.78,14,976/- and the balance amount of Rs. 45,33,064/- is payable to the Defendant No.1. The Plaintiffs desire to deposit that amount in the Court. By the impugned Order dated 18.08.2016, the learned trial Judge rejected the Application. He submitted that the Petitioners may be permitted to deposit the amount in the High Court.

7. On the other hand, Mr. Sawant submitted that the Respondents No.1 & 2 have challenged the very maintainability of the suit filed by the Plaintiffs and therefore, they should not be permitted to deposit this amount. In any case, if the Court permits the Plaintiffs to deposit the amount, it may be expressly clarified that the Court was not

examining the issue of maintainability of the suit as also it will be without prejudice to the rights & contentions of the Respondents No. 1 & 2.

8. Insofar as Writ Petition No.12572 of 2016 is concerned, Mr. Joshi submitted that the Plaintiffs have purchased the property for a consideration of Rs.3,34,51,960/-. Out of that amount, the Plaintiffs have paid Rs.2,11,750,24/- and the balance amount of Rs.1,22,76,936/- is payable to the Defendant No.1. He submitted that the Plaintiffs may be permitted to deposit this amount in the Court.

9. Mr. Sawant re-iterated the submissions made in Writ Petition No.12571 of 2016.

10. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record.

11. Section 54 of the Transfer of Property Act, 1882 defines the expression "Sale" which reads thus :-

"Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and

part-promised.”

12. In view thereof, in my opinion, the learned trial Judge was not justified in rejecting the Applications made by the Plaintiffs. Hence, the impugned Orders dated 18.08.2016 passed by the learned C.J.S.D., Palghar below Exhs.25 & 29 are quashed & set aside. Applications Exh.25 & Exh.29 are allowed. It is expressly made clear that I have not examined the issue of maintainability of the suits instituted by the Plaintiffs.

13. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

14. In view of disposal of Writ Petition Nos.12571 & 12572 of 2016, Civil Application No.461 of 2017 does not survive and same is disposed of.

All the contentions of both the parties are expressly kept open.

(R.G.KETKAR, J.)