

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

***SECOND APPEAL NO.164 OF 2013
WITH
CIVIL APPLICATION NO.511 OF 2013***

Kashinath Sidhappa Arvat & anr. ...Appellants / Applicants.

V/s.

Sou. Sharanbai Amanna Dhulk & ors. ...Respondents.

Mr.Surel Shah for the Applicants.

Mr.R.S. Alange for the Respondents.

CORAM : N.M. Jamdar, J.

DATED : 9 January , 2018.

ORAL ORDER :-

. By way of this Second Appeal, the Appellants-Original Defendant nos.2 and 3 have challenged the Judgment and Order passed by the learned District Judge, Solapur dated 31st December, 2012 in Regular Civil Appeal No.177/2004.

2. The Respondent no.1-Original Plaintiff filed a Regular Civil Suit No.133/2000 in the Court of Civil Judge, Junior Division, Akkalkot for specific performance of an agreement dated 30th March, 1996. It was the case of Respondent no.1-Original Plaintiff that Respondent no.1 paid a total amount of Rs.60,000/- and yet the sale

deed was not executed in her favour. Since, Respondent no.1-original Plaintiff came to know that Respondent no.2, the owner of the land, had executed a sale deed in favour of the Appellant on 24th March, 1998, the Respondent no.1 filed a suit for specific performance joining the Appellants as party-respondent. The learned Civil Judge accepted the case of Respondent no.1 as regard the existence of an agreement, however, holding that the Appellants are *bona fide* purchasers and thus the decree for specific performance cannot be passed against them, dismissed the suit by judgment and order dated 8th March, 2004. The Respondent no.1-original plaintiff filed Regular Civil Appeal No.177 of 2004, which was allowed by the learned District Judge by the impugned judgment and order. The learned District Judge held that the Appellants were not *bona fide* purchasers.

3. The learned counsel for the Appellants submitted that the findings of the learned Civil Judge that the Appellants were bona fide purchaser has been erroneously reversed by the learned District Judge. He submitted that the name of the original owner stood in the revenue record till the sale deed was executed in favour of the Appellants and thereafter the names of the Appellants were entered. He submitted that merely because public notice was not given by the Appellants it cannot be said that they are not *bona fide* purchasers. The learned counsel relied upon the decision of Apex Court in the case of *Ram Nivas V/s. Bano* ¹. The learned counsel further

¹ (2000) 6 Supreme Court Cases 685

contended that Respondent no.1 had not stepped into the witness box and instead examined a power-of-attorney holder and therefore as per the law laid down by the Apex Court in the case of *S. Kesari Hanuman Goud Vs. Anjum Jehan & Ors.*², it cannot be said that Respondent no.1-Plaintiff had proved his case. The learned counsel for the Respondent no.1 supported the impugned order and submitted that possession of the Respondent no.1 is protected throughout by interim orders and Respondent no.1 is in possession. He submitted that the Appellants made no efforts whatsoever to ascertain whether any rights have been created in respect of the suit land.

4. The agreement, on the basis of which suit is filed by Respondent no.1 is dated 31st March, 1996. The agreement in favour of the Appellant was executed on 24th March, 1998. The factum of agreement in favour of Respondent no.1 is proved. The suit was instituted on 24th April, 1998. As per section 19 of the Specific Relief Act, 1963, the performance of contract can be enforced against any person claiming under the original owner, except a transferee for value who has paid his money in good faith and without notice of the original contract. Since the agreement in favour of Respondent no.1-Plaintiff dated 31st March, 1996, is proved, question that arises for consideration is whether the Appeal would fall within ambit of Section 19 of Specific Relief Act, 1963.

² (2013) 12 Supreme Court Cases 64

5. It is an admitted position that no public notice was given by the Appellants before purchasing the property. The Appellants tried to contend that they have sought proclamation through Talathi before purchasing the property. Having taken this stand, it was incumbent on the Appellants to produce evidence in that regard. The Appellants did not even specify in what manner and on which date such proclamation was made.

6. Having taken this categorical stand and not produced evidence in that regard, it has been rightly noted by the learned District Judge that in absence of any documentary evidence, the question of knowledge of the Appellants had to be ascertained by the Court. Therefore, the Court had to ascertain the state of mind of the Appellants. It was therefore necessary for the Appellants to step into the witness box and depose. Without any cogent explanation, the Appellants did not step into the witness box instead examined two witnesses. The evidence of these witnesses have been considered by the learned District Judge and was found to be insufficient. Therefore, the Appellants failed to produce cogent evidence to demonstrate that they fall within the ambit of Section 19 of the Specific Relief Act, 1963.

7. If the Appellants did not have any knowledge and did not take steps as any prudent purchaser would take, the Appellants should have stepped in the witness box to explain the position. Merely because the name of the original owner continued in the

revenue record, did not mean that the Appellants need to have made any enquiry at all.

8. As regards the contention of the learned counsel for the Appellants that Respondent no.1 had not stepped into the witness box and instead examined a power of attorney holder, the Appellants role in assailing the Judgment and Decree will have to be considered. This appeal is not filed by the original owner. The agreement in favour of Respondent no.1 though originally was an oral agreement, subsequently it was reduced in writing. The power of attorney holder of Respondent no.1 has deposed only regarding existence of this written agreement on the basis of which the suit has been filed. The Appellants had to depose about the state of mind.

9. As regards the factual position, it is the contention of the Appellants that they are in possession of the suit property. The learned Civil Judge held in favour of the Appellants on the basis of the recital in the sale deed and the revenue records. The entries in the revenue record were based on the sale deed. The Appellants have not produced any evidence whatsoever to show that they are cultivating the suit land. On the other hand, as pointed out by the learned counsel for the Respondent no.1, an interim injunction was granted in favour of Respondent no.1 in the suit protecting the possession. Considering this position, the factual finding recorded by the learned District judge that the Appellants are not in possession, cannot be faulted with.

10. No question of law arises for consideration in this second appeal. Second Appeal is accordingly dismissed.

11. Civil Application is disposed of.

(N.M. Jamdar, J.)