

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

953 FIRST APPEAL NO.1142 OF 2019
WITH CA/4524/2019 IN FA/1142/2019

KIRAN BALSHIRAM DERE AND ORS
VERSUS
VIJAY SUDAM RASAL AND ORS

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. R.L. Kute, Advocate for
the appellants;
Mr. A.N. Nagargoje, Advocate for Respondent Nos. 1 to 3.

944 FIRST APPEAL NO.1143 OF 2019
WITH CA/4525/2019 IN FA/1143/2019

MADHUKAR MHATARBA UCHALE AND ORS
VERSUS
VIJAY SUDAM RASAL AND ORS

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. V.R. Dhorde, Advocate
for the appellants;
Mr. A.N. Nagargoje, Advocate for Respondent Nos. 1 to 3.

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CORAM : V.L. ACHLIYA, J.

DATED : 11th APRIL, 2019

PER COURT:-

1. Both these appeals are filed by the defendants in Special Civil Suit No.97/2015 against the judgment and decree dated 05.12.2018 passed by the 6th Joint Civil Judge Senior Division, Ahmednagar. The First Appeal No.1142/2019 is filed by original defendant nos.1 to 4 and the first Appeal No.1142/2019 is filed by the original defendant nos.5 to 7. The respondent nos. 1 to 3 in respective appeal are the original plaintiffs who filed the suit

for specific performance. By the impugned judgment, the trial Court has decreed the suit in favour of plaintiffs and as against the defendants in suit. By the decree passed, the sale deed executed by defendant nos.1 to 4 in favour of defendant nos. 5 to 7 has been declared as not binding on plaintiffs and further granted decree of specific performance making all the defendants to jointly execute the sale deed of suit properties in favour of the plaintiffs by accepting the balance sale consideration of Rs.1,27,24,225- (One Crore Twenty Seven Lakhs Twenty Four Thousand Two Hundred Twenty Five only) within two months from the date of decree. On failure to execute the sale deed, liberty has been granted to plaintiffs get the sale deed executed through the process of the Court. Being aggrieved, the defendants have preferred these appeals.

2. Heard the learned Senior Counsel appearing for appellants and the Counsel representing the respondent nos. 1 to 3 i.e. original plaintiffs. Perused the impugned judgment and order dated 05.12.2018 passed in Special Civil Suit No.97/2015 as well as the deposition of witness no.1 for the plaintiffs examined in the case.

3. On due consideration of the submissions advanced in the light of rival pleadings, evidence adduced in the case, the reasons and findings recorded by the trial Court and challenge raised in the appeals, I am of the view that arguable case has been made out to entertain the appeals and to stay the execution of decree passed by the Trial Court. Hence, the following order is passed:-

ORDER

[i] **Admit.**

[ii] Issue notice to respondents.

[iii] Mr. Nagargoje, learned Advocate waives service of notice in appeals for respondent nos.1 to 3 in respective appeals.

[iii] Mr. R.L. Kute, learned Advocate representing the appellants in First Appeal No.1142/2019 accepts the notice of appeal for respondent nos.4 to 7 in First Appeal No.1143/2019. Mr. V.R. Dhorde, learned Advocate representing the appellants in First Appeal No.1143/2019 accepts the notice of appeal for respondent nos.4 to 6 in First Appeal No.1142/2019.

[iv] Call Record and Proceedings.

[v] Pending disposal of the appeals, there shall be *ad-interim* order in terms of prayer clause 'A' in Civil Application Nos.4254 of 2019 and 4525 of 2019 subject to deposit of the amount of Rs.40,00,000/- by the appellants in First Appeal No.1143/2019 and filing of written undertaking within one week by the appellants in First Appeal No.1142/2019 to the effect that pending disposal of appeals, they shall not create third party interest in respect of suit properties, nor they will deal with the suit properties in any manner.

[vi] In order to explore the possibility of mutual settlement, the appellants as well as respondents are directed to remain present in Court on 29.04.2019.

[vii] In case, the appellants in First Appeal No.1143/2019 deposit the amount of Rs.40,00,000/- in terms of the order, same shall be invested in Fixed Deposit with Nationalized Bank initially for a period of 28 months with standing instructions to renew the same till disposal of the appeals.

[viii] On failure to deposit the amount and filing of undertaking as directed above, the interim order of stay to the execution of the impugned decree liable to be vacated.

[ix] Civil Application Nos.4524/2019 and 4525/2019 stand disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

SPR