

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

**APPEAL FROM ORDER (ST.) NO. 1901 OF 2019
WITH
CIVIL APPLICATION (ST.) NO. 1902 OF 2019
IN
APPEAL FROM ORDER (ST.) NO. 1901 OF 2019**

M/s. Mahaavir Enterprises

....Appellant

V/s.

Vilas Janardhan Kadu & Ors.

....Respondents

Mr. Onkar Gupte a/w. Ms. Minal Dedhia i/b. Malvi
Ranchoddas & Co. for the appellant.

Mr. Sandesh Patil a/w. Mr. Ashok T. Gade for R.No.1.

Mr. Surel S. Shah a/w. Mr. Siddharth S. Karpe for R.Nos.2 and 3.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
JUDGMENT DATE : 20th FEBRUARY, 2019.**

JUDGMENT :-

. With consent, heard finally at the stage of admission.

2. The appellant herein has challenged the order dated 24/10/2018 whereby the learned Joint Civil Judge, Senior Division, Panvel has dismissed the application at Exhibit – 5 filed by the aforesaid appellant in Special Civil Suit No.352/2018.

3. The appellant claims that the respondent no.1 was to be allotted a plot under 12.5 % scheme in view of acquisition of tenanted land of

Janardhan Kadu. The respondent no.1 represented to the appellant that he was the sole heir of the deceased Janardhan Kadu and entered into an agreement with the appellant in respect of the said plot. In terms of the said agreement, the appellant herein paid to the respondent no.1 total amount of Rs.75,00,000/- and the balance was to be paid after the allotment of the plot.

4. The records indicate that the respondent nos.2 and 3, who are the daughters of Janardhan Kadu had filed civil suits challenging the deed of adoption as well as the heirship certificate procured by the respondent no.1. The respondent no.1 and the respondent nos.2 and 3 entered into Consent Terms before the Lok Adalat and the said civil suits were disposed of before the Lok Adalat based on the consent terms entered between the respondent no.1 and respondent nos.2 and 3.

5. Subsequently, the CIDCO allotted the plot under 12.5% scheme to the respondent nos.2 and 3. The appellant having learnt of the same, filed a suit for specific performance as well as for damages. The appellant also filed an application for interim relief [exhibit-5] seeking to restrain the respondents from developing or disposing of the suit

property and/or creating third party right in respect of the suit property till the disposal of the suit.

6. The learned Judge, Civil Judge, Senior Division, Panvel has dismissed the application mainly on the ground that as per the award passed by the Lok Adalat in Regular Civil Suit No.75/2017 and 129/2017, the Deed of Adoption as well as the Heirship Certificate has been held to be invalid and the plot has been allotted to the respondent nos.2 and 3. These respondents are not the parties to the said agreement dated 04/12/2009 and hence, the agreement cannot be enforced against these respondents. The learned Judge has held that the appellant has failed to make out a prima facie case and hence, dismissed the application for interim relief. Being aggrieved by this order, the appellant has preferred this appeal.

7. Mr. Onkar Gupte, the learned counsel for the appellant submits that the consent terms entered into between the respondent no.1 and respondent nos.2 and 3 are fraudulent and that the award of the Lok Adalat is not binding on the appellant who was not a party to the said suits. He submits that the appellant has paid substantial amount to the respondent no.1 and has made out a strong case for specific

performance. He submits that though the respondent nos.2 and 3 are not parties to the agreement dated 04/12/2009, yet they are bound by the said agreement.

8. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

9. It is not in dispute that the respondent no.1 had entered into an agreement with the appellant for sale of plot to be allotted by CIDCO under 12.5% scheme in view of the acquisition of the tenanted land of Janardhan Kadu. The respondent no.1 had entered into an agreement with the appellant in respect of the said plot alleging that he was the sole heir of Janardhan Kadu. The respondent nos. 2 and 3, who are the daughters of Janardhan Kadu were not parties to this agreement and had not consented to the transfer. There was thus no privity of contract between the appellant and these respondents.

10. The respondent nos.2 and 3 claim that when they had visited the CIDCO office, they learnt that the plot under 12.5% scheme would be allotted to the respondent no.1. Upon inquiry, they learnt that the respondent no.1 had prepared a false and fabricated deed of adoption

and had also procured heirship certificate without any notice or intimation to them. Hence, they filed civil suits challenging the deed of adoption of the respondent no.1 as well as heirship certificate. Both these suits were disposed of by the awards passed by the Lok Adalat based on the consent terms filed by the respondent no.1 and the respondent nos.2 and 3. In the consent terms filed before the Lok Adalat, the respondent no.1 admitted that he is not the heir of Janardhan Kadu and that he has no right, title or interest over the property of Janardhan Kadu. He also admitted the rights of the respondent nos.2 and 3 to inherit, enjoy and possess the property of Janardhan Kadu.

11. The award of the Lok Adalat is deemed to be a decree of the Civil Court and is conclusive and binding on the parties. The appellant was not a party to the suit. He has claimed that the respondent no.1 and the respondent nos.2 and 3 had colluded and connived with each other, to defeat his rights under the agreement and had obtained the award by misrepresentation and fraud. Though it was open to the appellant to challenge the award on the ground of fraud, the appellant has not raised any such challenge. The appellant has thus prima facie failed to prove that the awards are vitiated by fraud.

12. The records also reveal that the CIDCO was not a consenting party to the agreement dated 04/12/2009. CIDCO had allotted the plot to the respondent nos.2 and 3 on 28/05/2018. The appellant has not challenged the said allotment in favour of the respondent nos.2 and 3. Prima facie, the respondent nos.2 and 3 are the owners of the said plot and are entitled to enjoy and possess the same without any interference or encumbrance. There being no privity of contract between the appellant and these respondents, prima facie the agreement dated 04/12/2009 cannot be enforced as against these respondents.

13. The appellant has, therefore, failed to establish prima facie case. The balance of convenience is also not in favour of the appellant. At this stage, Mr. Sandesh Patil, learned counsel for respondent no.1, on instructions, submits that the respondent no.1 has received total amount of Rs.75,85,000/- as on the date of the execution of the agreement. Under instructions, he submits that the respondent no.1 shall refund the said amount to the appellant within a period of four months, along with interest @ 9% p.a. from the date of the receipt of the amount till the date of the payment. Statement is accepted as an undertaking to the Court.

14. Considering all the above facts and circumstances, in my considered view, there is no reason to interfere with the order. Hence, I pass the following order :-

- (i) The appeal is dismissed.
- (ii) The respondent no.1 shall deposit before the Civil Judge, Senior Division, Panvel an amount of Rs.75,85,000/- with interest @ 9% p.a. from the date of the agreement till the date of the payment within a period of four months from the date of this order.
- (iii) The appellant is at liberty to withdraw the said amount without prejudice to its rights and contentions or the suit claim.
- (iv) Civil Application stands disposed of in view of dismissal of the appeal.

15. Suffice it to say that this order shall not be construed as an expression of opinion on merits of the matter. The trial Court to decide the suit on the basis of the evidence that would be led by the respective parties.

16. At this stage, the learned counsel for the appellant prays that the ad-interim relief, which was granted by order dated 22/01/2019 be continued to enable him to challenge this order. The interim relief granted by order dated 22/01/2019 shall continue for a period of four weeks from the date the order is uploaded.

(SMT. ANUJA PRABHUDESSAI, J.)