IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.509 OF 2017
WITH
CIVIL APPLICATION NO.938 OF 2017
IN
SECOND APPEAL NO.509 OF 2017

Shradhanand Samaj Sarvajanik Ajoba
(Ganpati Trust Through its Trustees)
Chidanand Revansiddha Vanrot & Ors. ..Appellants
V/s.
Shrikrishna Arjunrao Ambure & Ors. ..Respondents

Mr.A.A. Valsangkar i/b Mr.Samir Kumbhakoni for the Appellant.

Mr.P.K. Dhakephalkar, Senior Advocate i/b Mr.Manoj Kumar Tiwari for Respondent Nos.1 to 3.

Mr.Ashish Gaikwad a/w Mr.Ujwal Agandsurve, Ms.B.R. Khichi and Mr.Bhagwan Gawali i/b Mr.Ujwal Agandsurve for Respondent Nos.6 to 9.

CORAM : S.C. GUPTE, J.

DATE : 06th NOVEMBER 2019

P.C.

1. Heard learned counsel for the parties.

2. The Second Appeal challenges concurrent orders passed by the Trial Court and the First Appellate Court decreeing the suit filed by respondent Nos.1 to 4 (Original Plaintiffs) and directing the

appellant-trust and its trustees (original defendants Nos.7 to 11) to execute a sale deed in respect of the suit property in the name of the plaintiffs as per the plaintiffs' agreement for sale dated 27th September 1999 and deliver possession of the suit property to the plaintiffs.

3. Respondent No.5 herein, who was defendant No.1 in the suit, was the owner of the suit property. It is the case of the appellants-trust herein (defendant Nos.7 to 11) that he agreed to sell the suit property to defendant No.7-trust for a consideration of Rs.4.75 lakhs. Subsequent to this agreement, defendant No.1 executed another agreement for sale dated 27th September 1999, in favour of the plaintiffs. After this agreement was executed, by a registered sale deed dated 28th September 2000, the suit property was conveyed by defendant No.1 to defendant No.7-trust. The plaintiffs sued for specific performance of their agreement for sale with defendant No.1 togther with a declaration that the sale deed executed by defendant No.1 in favour of defendant No.7 was of no effect and a decree of delivery of possession of the suit property. The suit was decreed by the Trial Court. That decree was upheld in appeal by the First Appellate Court. Hence, the present Second Appeal by defendant Nos.7 to 11.

4. In support of this appeal, it is submitted by learned counsel for defendant Nos.7 to 11 that their agreement for sale was prior in point of time; it was of 12th February 1998, whereas the plaintiffs' agreement was of 27th September 1999. It is submitted that their agreement being of a prior date, the suit agreement of 27th September 1999 was not binding on them, and accordingly, the sale deed executed on 28th September 2000, being in pursuance of the aforesaid prior agreement for sale, was perfectly valid and capable of conveying the suit property to defendant No.7. Alternatively, it is submitted that the trust being a *bona fide* purchaser of the suit property without any notice and with consideration, the title was validly conveyed to the trust. Learned counsel submits that in pursuance of its prior agreement for sale, defendant No.7-trust was even put in possession of the suit property. It is submitted that these facts and the assessment of the Courts below of its case based on these facts, give rise to substantial questions of law concerning a prior agreement purchaser's right in respect of the subject property. Learned counsel also submits that the suit was not maintainable on account of want of permission of the Charity Commissioner under Section 50 of the Bombay Public Trust Act for filing of the suit against the defendant-trust.

5. None of these contentions gives rise to any substantial question of law. In the first place, so far as permission of Charity Commissioner under Section 50 of the Trusts Act is concerned, this question does not appear to have been actually argued before the Courts below. It is no answer to say that the contention forms part of either the pleadings of the appellants or their written submissions. It must be demonstrated on the face of the order that the contention was actually raised before the Court. If it was so raised and yet not reflected in the order of the Court, it is for the party to approach the Court and seek an order speaking to the minutes; this Court, sitting in appeal, cannot go behind the order of the Court to find out if it was so, particularly in the context of a second appeal, where this Court merely considers substantial questions of law **arising out of** the order of the Court.

6. So far as the appellants' case of prior agreement is concerned, it is important to note that the very existence of the alleged agreement itself was not countenanced by either of the Courts below. Whether or not an agreement for sale exists is a pure question of fact and unless the orders of the Courts below are vitiated by perversity or want of jurisdiction or any other error of jurisdiction, it is not permissible to this Court to entertain any

second appeal by necessiting the facts.

7. The so-called prior agreement for sale is in the form of *visar pavati*. Both Courts below have arrived at concurrent findings that this document is devoid of any particulars whatsoever. The First Appellate Court has particularly noted that the *visar pavati* did not contain any particulars of the agreement for sale such as total consideration, earnest payable at the time of the agreement, the time of performance including completion of sale and delivery of possession, payment of balance consideration, etc. The Court found that even in his written statement, the original owner i.e. defendant No.1, did not state particulars of such agreement like the earnest amount, the total consideration, the balance consideration, time for payment of balance consideration, time for execution of sale deed and other material terms and conditions. The Court found that even the day or month of the agreement for sale was not stated in the written statement. The Court, accordingly, did not believe the existence or genuineness of the so-called prior agreement for sale set up by the defendant-trust. These Concurrent findings of two Courts below are clearly supported some evidence; the Courts have duly considered all relevant and germane circumstances of the case and materials produced by the parties; and no irrelevant or germane

material or circumstances appears to have been taken into account for arriving at their findings. There is, accordingly, no case of perversity insofar as the conclusion of the Courts below concerning the agreement set up by the defendant-trust is concerned.

8. As for the registered sale deed executed in favour of the defendant-trust, it is pertinent to note that this sale deed was executed almost immediately after the plaintiffs issued a public notice concerning their agreement for sale dated 27th September 1999. The notice was published by the plaintiffs on 19th September 2000, the defendant-trust gave its reply to the notice on 22nd September 2000; and within a week thereafter, proceeded to have a registered sale deed executed in its favour. These facts completely destroy the trust's case of being a *bona fide* purchaser for value without notice.

9. Learned counsel for the appellants relies on the judgment of Delhi High Court in the case of ***Smt.Phool Kaur & Ors. V/s. Sardar Singh & Ors***[1]. In that case, a learned Single Judge of Delhi High Court has set out settled principles of law concerning application of Section 19 of Specific Relief Act, 1963. The Court has

1 **ILR (2011) Delhi 73**

observed that Section 19(b), as is apparent from a mere reading thereof, allows specific performance against persons acquiring title subsequent to the date of the agreement between the parties except when the case falls within the exception carved out by the legislature. That exception is in favour of a transferee in good faith for value and without notice of the original contract.

10. In the present case, even assuming that the defendant-trust's agreement for sale was prior in point of time, its actual acquisition of title was clearly after notice of the agreement of 27th September 1999 between the original owner of the suit property (defendant No.1) and the plaintiffs. Considering this and the fact that the so-called prior agreement for sale itself is not believed by either of the two Courts below, and which conclusion, as we have seen above, is very much a possible conclusion, there is no case of *bona fide* purchase with value without notice on the part of the defendant-trust.

11. Accordingly, there is no merit in the challenge to the impugned order. No substantial question of law arises for the consideration of this Court, the Second Appeal is dismissed.

12. At the request of learned counsel for the appellants, the interim protection operating in their favour till date is extended for a further period of 4 weeks. Such extention will, however, be subject to the appellants maintaining status-quo in respect of the suit property. It is ordered accordingly.

13. In view of the disposal of the Second Appeal, the Civil Application does not survive and the same is disposed of.

(S.C. GUPTE, J.)