

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

**APPEAL FROM ORDER NO. 383 OF 2019
WITH
CIVIL APPLICATION NO. 456 OF 2019**

Smt.Janakdulari Shivram Tiwari & Ors. ...Appellants
Vs.
M/s.Axis Dwellings L.L.P. & Ors. ...Respondents

Mr.A.Y. Sakhare, Senior Advocate I/b. Joel J. Carlos for Appellants.
Mr.G.S. Godbole with Atharva Dandekar I/b. Ketki Gadkari for Respondent
Nos.1 to 3.

CORAM : S.C. GUPTE, J.

DATE : 22 AUGUST 2019

P.C. :

Heard learned Counsel for the parties.

2 This appeal from order challenges an interlocutory order passed by the Civil Judge, Senior Division, Palghar. The subject matter of the suit filed by the Appellants, in which the impugned order was passed, are two properties being non-agricultural lands. These properties originally belonged to one Shivram Tiwari, a legal heir of one Ram Dulhare Ayodhya Prasad Tiwari who was a protected tenant in respect of the properties. Shivram Tiwari (since deceased) had executed a Power of Attorney in favour of one Sadashiv Dube. After Shivram Tiwari died, the names of his legal heirs, being the Plaintiffs and Defendant No.18 to the suit, who are the Appellants before this court, were mutated in the record of rights. Subsequently, they were declared as deemed purchasers of the suit properties under Section 32(g) proceedings under the Bombay Tenancy

and Agricultural Lands Act. It is the grievance of the Plaintiffs and Defendant No.18 that Sadashiv Dube, under the guise of defending a suit filed by one Ramkewal Rajaram Dixit, obtained a General Power of Attorney from Plaintiff Nos.2 and 3. That was sometime in the year 1999. After noticing the fraud played upon them by Sadashiv Dube, they terminated the Power of Attorney and executed a Deed of Cancellation sometime in March or April 2003. It is further the grievance of the Plaintiffs and Defendant No.18 that taking advantage of the fact that legal heirs of the deceased Shivram were living separately, Sadashiv Dube misled the parties and got executed separate General Power of Attorneys from the parties, that is to say, first from Plaintiff No.4, and then from Plaintiff No.1 and Defendant No.18 and sold the properties to Defendant No.11. This sale was by a registered instrument, which was executed sometime in January 2007. In September 2007, Defendant No.11 is claimed to have executed an agreement for sale in favour of Defendant No.10. In January 2008, the share of Plaintiff No.1 and Defendant No.18 is also claimed to have been fraudulently sold-off by Sadashiv Dube to Defendant No.10. Subsequently in April 2008, his interest in the land is claimed to have been conveyed by Defendant No.11 also to Defendant No.10. Plaintiff No.1 and Defendant No.18 are claimed to have entered into an agreement for sale in respect of the suit properties sometime in May 2008. The rights of the proposed transferee were also taken over by Sadashiv Dube by filing consent terms in a suit. Under these consent terms, Dube was declared to be the owner of the property. This happened sometime in 2009. Subsequently, part of the suit properties were sold in April 2010 by Defendant No.10 to Defendant No.4, who in turn sold the land to Defendant No.1, who is the main contesting Defendant before the court. The remaining portion of the land also changed hands and finally came into the hands of Defendant No.3.

One of the two properties, bearing Survey No.12/1/B, stands in the name of Defendant No.1, whilst the other property bearing Survey No.12/2 stands in the name of Defendant No.3. After all these years and all these transactions, sometime in 2018, the Plaintiffs claim to have learnt about the construction being carried out on the suit property and thereafter, the present suit has been filed on 5 October 2018.

3 On these facts, by his impugned order dated 27 November 2018, the learned Judge of the City Civil Court declined to grant any interim relief to the Plaintiffs, firstly, on the ground of delay and laches and secondly, on the ground that the termination of the Power of Attorney was not proper. The learned Judge was of the view that at least since 2003, the Plaintiffs were aware of the fact that the original Power of Attorney was in possession of Sadashiv Dube and that he was purportedly misusing the same. The Plaintiffs had cancelled the Power of Attorney and, despite such cancellation, did not raise any objection to the construction being carried out on the property. The learned Judge noticed that the construction was now complete and many flats in the newly constructed building were even sold. The learned Judge also noticed that though the deed of cancellation of the Power of Attorney was executed, there was no communication to the Registrar's office at Palghar. The court also noticed that the Plaintiffs were aware of the previous litigation. The court was of the view that as an ordinary prudent man looking after his property, it was for the Plaintiffs to look after their property and take care of the same. The court observed that the Plaintiff knocked the doors of the court, when as many as six buildings were constructed and more than 55 flats in the building were sold to third parties. The court was, accordingly, of the view that the Plaintiffs were guilty of delay and laches and no equitable relief could be granted to the

Plaintiffs. The court also observed that cancellation of the Power of Attorney in the year 2003 was without reference or intimation to Sadashiv Dube and there was no public notice in respect of any such cancellation. The court was also of the view that the balance of convenience was clearly in favour of the Defendants. The court, in the premises, rejected the interim application of the Plaintiffs.

4 In the facts of the present case, which have been outlined above, it cannot be said that the impugned order of the Trial Judge suffers from any infirmity. The above narration indicates that the Plaintiffs were aware of the purported misdeeds of Sadashiv Dube at least since 2003 and had even taken steps for cancellation of the Power of Attorney issued in his favour by their predecessor. Ever since 2003, there have been several registered documents through which the suit properties have changed hands. At least one of the suit properties has been constructed upon; there are as many as six buildings erected on this property and several flats have been sold to third parties. In these circumstances, approaching the court nearly after 15 years of the purported cancellation of the Power of Attorney on account of a purported fraud, which the Plaintiffs claim to have noticed as having been played by Sadashiv Dube long time back, the Plaintiffs sought an equitable relief which, as I have noted above, is rightly rejected by the trial court.

5 Mr.Sakhare, learned Senior Counsel appearing for the Defendants, submits that at least as far as the other suit property is concerned, namely, Survey No.12/2, which is a vacant property, the Respondents must be put to terms. Learned Counsel submits that injunctive reliefs ought to be granted at least in respect of this property.

Even as regards this property, the Plaintiffs had slept over their rights. The property has changed hands through various parties by registered documents and various third party rights have been created in it. In the facts and circumstances of the case, the only appropriate relief that can be considered, if at all, would be to direct Respondent No.3 firm (original Defendant No.3), in whose name this property stands as of date, to intimate to the third party/parties with whom the firm deals about the pending suit, namely, S.C. Suit No.45/2018.

6 The impugned order of the trial court, accordingly, does not merit any interference, save and except a direction to be issued to Respondent No.3 (original Defendant No.3) to bring the pendency of the suit, namely, S.C. Suit No.48/2018, to the notice of any third party that Respondent No.3 deals with in respect of the suit property, being Survey No.12/2. It is ordered accordingly.

7 At the joint request of the Appellants and Respondent Nos.1 to 3, the hearing of the S.C. suit is expedited. The trial court is requested to dispose of the suit as expeditiously as possible and preferably within a period of one year from today. The appeal from order is disposed of accordingly. No order as to costs.

8 In view of the disposal of appeal from order, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)