

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 357/2018

Ghanshyam Budhaji Khobragade and others **Versus** Shrawan Sambhaji Katkar and others

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri A.H. Lohiya, Advocate for Appellants.
 Shri M. Anilkumar, Advocate for Respondent No. 1.
 Shri Raja Dandwate, Adv. h/f Shri M.P. Khajanchi, Adv. for respondent Nos.2 and 3.

CORAM : S.M. MODAK, J.

DATE : 26/08/2021

Heard Shri A.H. Lohiya, learned advocate for the appellants/subsequent purchasers, Shri M. Anilkumar, learned advocate for respondent No.1/original plaintiff and learned Shri Raja Dandwate, Adv. h/f Shri M.P. Khajanchi, Advocate for respondent Nos. 2 and 3/original defendant Nos. 1 and 2.

2. Learned Advocate Shri M.P. Khajanchi has already submitted his argument on the last date.

3. While issuing notice on 30/10/2018, this Court has already framed following substantial question of law :

“Whether the appellate Court has rightly appreciated the evidence while coming to the conclusion that the plaintiff had proved his readiness and willingness to perform his part of the contract ?”

4. Learned advocate Shri M. Anilkumar, though

submitted that present appellant being subsequent purchaser cannot take a plea about non-proof of readiness and willingness on the part of plaintiff. He also relied upon various judgments filed as per the Pursis. The Hon'ble Supreme Court in various judgments have dealt with the issue of joining the subsequent purchaser as a party, the effect of the subsequent sale-deed executed during the pendency of litigation, Plaintiff to ask for declaration of that subsequent sale-deed as illegal and void.

5. Whereas according to learned Advocate Shri A.H. Lohiya, observations in those judgments in fact, support the grievance of the appellant. He has submitted that even the subsequent purchaser can take up a plea, which is available to the vendors. He emphasised that burden to prove requirements of Section 16 of the Specific Relief Act is on the plaintiff and as such subsequent purchaser can take up that plea.

Whereas according to the learned Advocate Shri M. Anilkumar, the subsequent sale-deed was executed in spite of the fact that his client had given a notice of *lis pendens* to the concerned Office of Sub Registrar. According to him, as per the provisions of Section 19 (b) of the Specific Relief Act, the protection is not available to subsequent purchaser who has purchased it with the notice of the litigation.

6. He submitted that considering the execution of sale-deed by the appellant having full knowledge of the pendency of the litigation, the Second Appeal needs to be considered on

priority basis. He submitted that the appeal be decided on the basis of the available record. He also submitted that in fact, the appellant has no case in order to disprove readiness and willingness on the part of the plaintiff.

7. According to the learned Advocate Shri A.H. Lohiya, the appeal needs to be admitted and then it can be heard on the priority basis. According to him, the procedure about filing of private paper book needs to be complied with and in that eventuality is ready for final argument at the earliest.

8. Learned Advocate Shri M.P. Khajanchi, also submitted that the decree passed by the First Appellate Court is defective in the sense that there is no direction to the appellants/subsequent purchasers to hand over the possession to the plaintiff.

9. In view of the above submissions, this Court feels it necessary to **admit** the Second Appeal on the substantial question of law which is already framed on 30/10/2018. The appellant has already filed certain documents / evidence as per the index.

10. Shri M. Anilkumar, learned Advocate waives notice for respondent No.1.

11. Shri M.P. Khajanchi, learned Advocate waives notice for respondent Nos. 2 and 3.

12. The record and proceedings is already received. The

respondent No.1 is at liberty to file the remaining documents in this Court. It be done within ten days and then appeal be fixed for final hearing in the last week of **September-2021**.

13. The filing of private paper book is dispensed with.

Civil Application (CAS) No. 856/2018

1. This Court has already stayed the execution of the decree passed by the First Appellate Court. The effect of that order is continued for the period of three months or earlier, if the Second Appeal is disposed of.

2. The appellant is directed not to create third party interest and not to change the nature of the property including making any constructions on the suit land, until further orders.

3. Civil Application is disposed of.

JUDGE