

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 SECOND APPEAL NO.161 OF 2022
WITH CA/4218/2022 IN SA/161/2022

1) Sopan s/o Maroti Gayke,
Age 55 years, Occ. Agriculture,
R/o. Adgaon, Tq. & Dist Aurangabad.

2) Mahesh s/o Hiralal Shinde,
Age 41 years, Occ. Agriculture,
R/o. Zalta, Tq. & Dist. Aurangabad.

... **Appellants.**
(Orig. Defts No.4 & 5)

VERSUS

1) Dilip s/o Chandmalaji Lodha,
Age 55 years, Occ. Agriculture,
R/o. Subhash Road, Beed.

2) Krishna s/o Shesrao Maske,
Age 55 years, Occ. Agriculture,
R/o. Zalta Tq. & Dist. Aurangabad.

3) Mangal Krishna Maske,
Age 44 years, occ. Agriculture,
R/o. Zalta, Tq. & Dist. Aurangabad.

4) Rohit s/o Krishna Maske,
Age 26 years, Occ. Agriculture,
R/o. Zalta Tq. & Dist. Aurangabad.

5) Dattatraya s/o Sheshrao Maske,
Age 58 years, Occ. Agriculture,
R/o. Zaltq Tq. & Dist. Aurangabad.

... **Respondents.**
(Orig. Defts. Nos. 1,2,3 & 6)

...

Advocate for the Appellants : Mr. Shinde Yogesh R.
Advocate for the Respondent No. 1 : Mr. G. K. Naik-Thigle

CORAM : MANGESH S. PATIL, J.
DATE : 23.03.2022.

PER COURT :

Heard the learned advocate for the appellants who was the original defendant Nos. 4 and 5 as also the learned advocate Mr. Naik-Thigle who appears on behalf of the respondent No. 1 who is the original plaintiff.

2. Shortly stated, the appellants are the subsequent purchasers who were arrayed as defendants No. 4 and 5 in a suit filed by the respondent No. 1 for specific performance against the respondent No. 2 to 4.

3. The appellants tried to defend the suit by putting forth a plea of they being *bona fide* purchasers of the suit property for value without notice of the agreement entered into between the respondent Nos. 1 and 2. The issues were framed by the trial court. Evidence was led. The trial court decreed the suit for specific performance and refused to believe the appellants being *bona fide* purchasers.

4. The appellants along with respondent No. 2 challenged the judgment and decree before the lower appellate court which concurred with the findings of the trial court and dismissed the appeal.

5. According to the learned advocate for the appellants, both the courts below have not correctly appreciated the stand of the appellants and the evidence led by them to substantiate their stand of being *bona fide* purchasers. They have also ignored the provision of Section 3 of the Transfer of Property Act in spite of there being evidence demonstrating about precaution having been taken by them before purchasing the suit property. He would further submit that the courts below also failed to consider the fact that the agreement executed by the respondent No. 2 in favour of the respondent No. 1 was not a registered agreement. Even no notice was published by them. The appellants' property situates in the vicinity of the suit property. They would have known had there been any evidence about existence of agreement between the respondent Nos. 1 and 2. Both the courts have grossly erred in appreciating the law and

evidence in the proper perspective and the second appeal deserves to be admitted on substantial questions to be formulated according to grounds No. (I) to (V) in the appeal memo.

6. The learned advocate Mr. Naik-Thigle submits that there was no evidence before the trial court demonstrating precautionary steps taken by the appellants before purchasing the suit property. A property worth Rs. 29 lakhs was purchased for pittance. This could not have been but for the respondent No. 2 and the appellants having acted in tandem. He would further point out that had the appellants been *bona fide* they would have certainly taken precaution of atleast publishing a notice inviting objections from public at large before purchasing the suit property. All these circumstances had weighed with the courts below while refuting the appellants' claim of being *bona fide* purchasers.

7. I have considered the rival submissions and perused the paper book of the lower appellate court with the assistance of the learned advocates of both the sides.

8. Obviously, the only defence that is available to the appellants is to demonstrate that they are the *bona fide* purchasers of the suit property for value without notice of the previous agreement entered into between the respondent Nos. 1 and 2.

9. Except the uncorroborated and bald statements in examination in chief the appellants did not lead any other evidence to corroborate their version or demonstrate any steps having been taken by them before purchasing the suit property. Though the learned advocate for the appellants vehemently submits that the respondent Nos. 1 and 2 had not published any notice, the same argument would hold good with equal vehemence against the appellants themselves, more so, when the burden to prove that they are *bona fide* purchasers was on them. Admittedly, they did not publish any notice before purchasing the suit property, which could have been a good

ground to support their claim of having taken precaution as is expected by Section 3 of the Transfer of Property Act.

10. Again, there is one more circumstance which though was not available for the trial court to be noticed, but was available before the lower appellate court but was not noticed. The appellants and the respondent No. 2 tried to demonstrate before the trial court that they have their independent interest to protect inasmuch as they had filed separate written statements and even the appellants cross-examined the respondent No. 2. Surprisingly all the three that is the appellants and the respondent No. 2 seen to have joined hands in challenging the judgment and decree passed by the trial court by preferring the appeal before the lower appellate court. If really the appellants in this second appeal were having *bona fides*, they would have maintained that stand throughout. Their attempt to cross examine the respondent No. 2 before the trial court and again joining hands in filing the appeal before the lower appellate court, in my considered view, was an additional circumstance which ought to have been noticed by the lower appellate court. In all probability they must have been acting in tandem since a property which the respondent No. 1 had agreed to purchase for Rs. 29 lakhs would not have been sold to the appellants for considerably less price.

11. Be that as it may, the circumstances pointed out by the courts below clearly substantiate the conclusions drawn by them refuting the stand of the appellants of being *bona fide* purchasers for value without notice.

12. It is trite that mere recording of erroneous finding does not *per se* give rise to any substantial question of law when both the courts below have concurred in recording and concluding a fact. Going by the parameters laid down by the apex court in the matter of **Narayanan Rajendran And Anr vs Lekshmy Sarojini And Ors** (2009) 5 SCC 264 this court cannot enter into disputed questions of fact.

13. No substantial question of law arises for determination in this second appeal. It is dismissed.

14. Pending Civil Application is disposed of.

(MANGESH S. PATIL, J.)

mkd/-