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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1001 OF 2017

MRS. KADIJA SHAMSUDDIN

....PETITIONER

V/s.

MR. MADHUKAR GENU KAMBLE
AND ORS

.....RESPONDENTS

Mr. Sumanth Anchan Advocate for the Petitioner

Mr. Mohan N. Devkule i/b Mr. Pankaj J. Das for Respondent nos. 6A to 6C

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 25, 2022.

P.C.:

- 1) This Petition is by Plaintiff to a Suit for specific performance being Special Civil Suit No. 1661/2005.
- 2) Defendants to the said Suit being Defendant nos. 1 to 6 executed a development agreement in favour of Defendant no. 7 on 25/11/2004 who in turn executed further development agreement dated 03/08/2005 in favour of Defendant no. 8.
- 3) It appears that Defendant nos. 1 to 6 have decided to

compromise the suit claim qua specific performance with the Plaintiff and accordingly an Application Exh. 72 came to be moved under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity). Application Exh. 80 came to be moved by Defendant nos. 7 & 8 in whose favour Defendant nos. 1 to 6 have executed a development agreement thereby objecting the aforesaid compromise.

4) Vide impugned order dated 20/09/2016, Exh. 72 is ordered to be kept on record and further ordered that same shall be considered while deciding the Suit claim on merit. As a consequence, objection to the aforesaid extent vide Exh. 80 moved by Defendant nos. 7 & 8 came to be allowed. As such, this Petition.

5) The submissions are, based on the provisions of Section 23 of the Indian Contract Act, what is claimed is, Suit to the extent of specific performance in favour of Petitioner-Plaintiff is rightly so settled. Court below as such was duty bound within framework of Order XXIII Rule 3 of CPC to record a compromise and to draw decree. As such, the Court should have ordered the Suit to proceed only on the issue of validity of the development agreement inter-se between

Defendant nos. 1 to 6 and 7 and 8. He would as such urge that once the title is vested in the Petitioner by virtue of compromise/settlement under Order XXIII Rule 3 of the CPC, Court was duty bound to record the same.

6) While countering the aforesaid submissions, counsel for Respondent would support the order impugned as according to them, recitals in the development agreement are worth referring to. According to him, based on said appreciation, Trial Court was justified in directing that the prayer moved under Exh. 72 shall be considered while Suit will be decided on merit.

7) I have appreciated said contentions.

8) Fact about execution of development agreement dated 25/11/2004 by Defendant nos. 1 to 6 in favour of Defendant no. 7 and further development agreement by Defendant no. 7 in favour of Defendant no. 8 on 03/08/2005 is not in dispute as the same is subject matter of challenge in the aforesaid Special Civil Suit which is also for specific performance.

9) Defendant Nos. 1 to 6 who are original owners of the Suit property have settled the claim to the extent of specific performance in

favour of Petitioner and as such, prayer for recording settlement and drawing compromise Decree was moved. Fact remains that such compromise was objected by Defendant nos. 7 & 8 based on above referred development agreements as it is claimed that development agreements and Power of Attorney also create interest of Defendant nos. 7 & 8 in the Suit property. Court below as such while dealing with prayer of the Petitioner was sensitive to the recitals in Power of Attorney and development agreements and has rightly so deferred recording of compromise. This Court is required to be sensitive to the embargo created under Section 22 of the Indian Contract Act in case if the parties to the Suit demonstrate that by virtue of Power of Attorney and development agreements, agency is created in favour of Defendant nos. 7 & 8 qua the Suit property.

The recording of compromise pursuant to provisions of Order XXIII Rule 3 of the Civil Procedure Code is after satisfaction of the Court that such compromise is lawful. The provision further contemplates deferring of recording of compromise by adjourning the matter for reasons to be recorded. In the case in hand, in view of objection raised by Defendant nos. 7 & 8, Court below in the impugned

order recorded reasons for deferring of passing of the order on compromise which are quite appealing. As such, order impugned appears to be in tune with provisions of Order XXIII Rule 3 of the CPC.

10) Keeping in mind the aforesaid legal position, recitals in the Power of Attorney and the development agreement, Court below in my opinion is justified in passing the order impugned.

11) Court is also required to be sensitive to the fact that claim of the Petitioner that though recording of compromise is not rejected, however, same shall be considered on merits while deciding the Suit claim. That being so, in my opinion, no illegality could be noticed in the order impugned which warrants interference in the extraordinary jurisdiction.

12) Petition stands rejected.

13) Since the Suit is pending since last more than 15 years, hearing of the Suit is expedited.

[NITIN W. SAMBRE, J.]

IRESH SIDDHARAM
MASHAL

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