

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

WRIT PETITION 3088 OF 2022

SHALIKRAM
PRALHADRAO
BOREY

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1. Shrikant S/o. Anand Aadam & Ors. ... Petitioners.
(Org. Defendant)

Versus

Vandana W/o. Shriniwas Aadam ... Respondent.
(Org. Plaintiff).

Mr. Surel S. Shah, Advocate for the Petitioners.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 10, 2022

P.C. :-

1. The challenge is to the judgment in Misc. Civil Appeal 40 of 2019, whereby the District Judge-II, Solapur dismissed the Appeal preferred by the original Defendants, challenging the order dated 16.03.2019 passed by the 4th Joint Civil Judge, Senior Division, Solapur, granting interim relief in the nature of the mandatory injunction.

2. The Plaintiff instituted Special Civil Suit 89 of 2018, seeking decree of specific performance of contract qua Plot 13, admeasuring 439.50 sq. meters and construction thereon, admeasuring 240 sq. meters, situated in the city of Solapur.

3. In brief the case of the Plaintiff is that the suit property is owned by Defendant 1, who mortgaged the same in favour of the Bank of Maharashtra as security for loan availed. Defendant 1 was in financial difficulty and defaulted in payment of the installments. The Bank initiated legal action whereupon Defendant 1 decided to sell the suit property to the Plaintiff. The Plaintiff claims to have deposited Rs. 89,25,000/- (Rs.Eighty-nine lakhs and twenty-five thousands) in the Bank from December 2014 to February 2017. She further deposited Rs. 68,00,000/- (Rs.Sixty-eight lakhs) on 31.03.2017 in the loan account of Defendant 1. On 03.04.2017, Defendant No. 1 executed agreement of sale in favour of the Plaintiff and delivered the possession. The Plaintiff claims that out of the aggregate consideration of Rs. 1 Crore, the Plaintiff paid Rs. 89,25,000/- (Rs.Eighty-nine lakhs and twenty-five thousands) to Defendant 1 and the balance consideration of Rs.10,75,000/- (Rs.Ten lakhs seventy five thousand only) was payable on the date of the execution of sale deed. According to the Plaintiff, on 30.01.2019, the Defendant 1 broke open the lock of the Plaintiff and tried to take possession of the suit property. It is broadly on such allegations that the Plaintiff sought interim relief.

4. The submission canvassed on behalf of the Defendant before me is that since the agreement of which specific performance sought is not registered, the same cannot be looked into to ascertain possession. Both the Courts below

have concurrently held that the possession was delivered. It is noted that the payment by the Plaintiff of Rs. 68,00,000/- (Rs. Sixtyeight lakhs only) in the loan account of Defendant 1 is admitted by Defendant 1. Defendant 1, however, contends that the said deposit of Rs. 68 lakhs is not connected with the alleged agreement of sale.

5. The Courts below have, prima facie, believed and accepted the affidavits sworn by the workers of the factory of Plaintiff, which is situated on the land in question. The Courts below have further considered the submission of the Defendants on the touchstone of section 49 of the Indian Registration Act, 1908, relying, inter-alia, on the decision of the Apex Court in **S. Kaladevi vs. V. R. Somsundaram & Ors.** - AIR 2010 SC-1654. The learned Appellate Court has looked into the agreement on the premise that such exercises is permissible for collateral purpose for ascertaining the possession. The learned counsel for the Petitioners / Org. Defendants, invites my attention to the decision of the Apex Court in the case **Ameer Minhaj vs. Dierdre Elizabeeth (Wright) Issar & Ors.** - (2018) 7 Supreme Court Cases 639 and in particular the articulation in paragraph 10 which is to the effect that if the agreement is not registered then possession cannot be protected by invoking section 53-A of the Transfer of Property Act. I am afraid the said observation does not take the case of the Petitioner any further in the context of the controversy involved.

6. I note that injunctive orders are operating since 2019. In such situation, it would be more appropriate if the suit itself is expedited and I accordingly, direct so.

7. Subject to the aforesaid directions, the Petition is dismissed.

(ROHIT B. DEO, J.)

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