

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.370 OF 2022

Mohammad Irfan Naim Chaudhary .. Appellant
Versus
Jayant Vanechand Vasa & Ors .. Respondents
...

Mr.Abhinav Chandrachud i/b Pavan S. Patil for the appellant.
Mr.Karl Tamboly for the respondents.

CORAM: BHARATI DANGRE, J.
DATED : 28th APRIL, 2022

P.C:-

1 The appellant before me, is the original plaintiff, who instituted Special Civil Suit No.417 of 2021, seeking specific performance of a Memorandum of Understanding dated 14/1/2018 entered into, with defendant nos.1 to 3, and sought an order to execute and register the sale deed of the suit property in his favour, with an ancillary relief of the delivery of vacant and peaceful possession.

The suit property covered all that piece and parcel of agricultural land admeasuring 0.8 Hectare 51 R at Gat No.B of Revenue Village Takale, Taluka Miraj, district Sangli.

2 The defendant no.1 is the father of defendant nos.2 and 3, who are owners of the suit property, and who are dealing in land and its development. The plaintiff, claim to be a farmer is also into the business of development of land and construction.

 Upon the proposal to floated by defendant no.4, who is also to the business of Real Estate, the plaintiff, gained information, that the defendant nos.1 to 3 are the owners of 2H 83 R land out of the suit property which is purchased by them by distinct sale deeds registered before the Sub-Registrar and since the defendant nos.1 to 3 were interested in selling the suit property and were in search of prospective buyer, the proposal came to the plaintiff and he evinced his interest, since the property being located adjacent to Takali Road, had huge potential for development.

3 The plaintiff found the suit property to be suitable and appropriate for its development and construction, and on his visit to the suit property, one person was found to be residing therein and the defendants conveyed to the plaintiff that the suit property was an ancestral property of the said person, and they will get the property vacated from him. It was also impressed upon him, that the suit property is having huge potential of development and is in the process of conferring the N.A permission, after which, the land can be put to residential use. Evidencing their intention, the defendants supplied copy of the sale deed along with the letter dtd. 8/8/2018 issued by the Joint

Director of Town Planning, Pune Division, Pune and expected investment of money for the purpose of conversion of the land and to finalize the plotting lay out by making payment of fees and premium to the government.

Pursuant to the negotiations, revolving around the suit property, the defendant nos.1 to 3 agreed to sell the suit property to the plaintiff for total consideration of Rs.13,75,00,000/- and the plaintiff agreed to purchase the suit property for the said consideration. It was agreed between the parties that the defendants will execute the sale deed of the suit property, once they receive sanction lay out of plotting and residential use permission from the concerned authority.

4 Accordingly, a document titled as 'Memorandum of Understanding' came to be executed on 14/1/2018 and the defendant nos.1 and 3 demanded an amount of Rs.25 lakhs as token, since the money was needed to make payment of premium/charges for conversion of the suit property. The defendant no.1 gave an assurance that since he is the *Karta* of the Hindu Undivided Family, he has authorization from his two sons to sell the parcels of land acquired by them by distinct sale deeds and that is how the defendant no.1 for himself and on behalf of defendant nos.2 and 3 executed the MOU of and agreed to sell the suit property to the plaintiff for valuable consideration of Rs.13,75,00,000/-. The MOU stipulated certain conditions, including the responsibility of the defendants to convert the said

land at their own cost and completion of all the necessary compliance required for the same before the Government authority. The defendant was also cast with the responsibility of obtaining sanction for plotting of lay out on the suit property at their own cost.

Upon compliance of the aforesaid condition, it was agreed that the plaintiff and the defendant shall complete the transaction of sale and purchase of the suit property. Parallelelly the plaintiff paid to the defendants part consideration and according to the plaintiff, he paid an amount of Rs.90 lakhs and one cheque of Rs.25 lakhs issued in favour of defendant no.3 dated 27/2/2018 was not cleared from the account of the plaintiff.

5 Despite the execution of the MOU on 14/1/2018, the defendants failed to abide by the stipulation contained therein in conveying the property in favour of the plaintiff, on the pretext of delays at the Government offices in obtaining the conversion permission and also on the pretext that they are in the process of settling the dispute initiated by one of the legal heirs of the original land owners qua the suit property, but when the plaintiff gained knowledge that the defendants have already secured the non-agricultural use, permission in respect of the suit property and are in search of the new buyers, he instituted a Suit for specific performance by pleading the cause of action to have accrued on 20/11/2021, when there was a meeting between the plaintiff and the defendants, who demanded additional sum of

Rs.16,25,00,000/- by substituting the agreed consideration of Rs.13,75,00,000/- when the MOU was entered between the parties.

Plaintiff sought specific performance of the MOU dated 14/1/2018 property and on failure of the defendant to execute the sale deed and deliver the possession, sought its execution through the Court Commissioner.

6 The plaint was accompanied by the MOU dated 14/1/2018 as well as the account statement of the plaintiff, depicting the payments effected in favour of the defendants and also the copy of the cash vouchers exhibiting payment made in favour of defendant no.4.

In the Suit, the plaintiff filed an application for temporary injunction, where it was specifically averred that the defendant nos.1 to 3 are avoiding to perform their part of the agreement, of sale of the suit property in favour of the plaintiff, as agreed under the MOU, pursuant to which the defendants have already received huge amount of Rs.90 lakhs. The plaintiff pleaded that he was always ready and willing to perform his part, as agreed under the MOU, but there was failure on part of the defendant to execute the sale deed, and demand of additional amount of Rs.16,25,00,000/-, depict the malafide intention of the plaintiff.

The plaintiff pleaded that if injunction is not granted, restraining the defendants from alienating the suit property, the purpose of filing the Suit will be frustrated and the plaintiff will suffer irreparable loss.

7 The aforesaid pleadings in the application came to be traversed, by filing an affidavit by the defendant nos.1 to 3 (Exhibit-24). As the affidavit negated, the plea raised by the plaintiff, it was pleaded that Gat No.142 was trifercated into Gat No.142A, 142B and 142C. Gat No.142B admeasuring 8H, 51R was pleaded to be the property of Satar Maker family which was partitioned and divided into three parts, each part admeasuring 2H 84 R. The defendant nos.1 to 3 purchased the property from three distinct owners by registered sale deeds and the name of the defendants was mutated in the record of rights against separate land parcels and the property was purchased by defendant nos.1 to 3, from their self acquired income.

The common reply of the defendant nos.1 to 3 focus on the breach of the MOU at the instance of the plaintiff, by pleading that as per the MOU, the plaintiff has failed to pay an amount of Rs.One crore, as agreed, and the payment was made only to the extent of Rs.25 lakhs on 14/1/2018, and a cheque of Rs.25 lakhs was made over to defendant no.1 on 18/1/2018 and cheque of Rs.25 lakhs being made over to the defendant on 24/2/2018, i.e. a total sum of Rs.75 lakhs was passed over. However, a cheque issued by the plaintiff to the defendant no.2

on 24/2/2018 was dishonored on 27/2/2018 and the amount came to be credited on 15/3/2018. However a cheque given by the plaintiff to defendant no.3 on 27/2/2018 was dishonored on 28/2/2018 and till date, no fresh cheque is given, nor the amount is paid in cash.

The defendants specifically pleaded that the plaintiff had no intention to perform his part of the agreement and therefore, he has no right to seek specific performance since he has failed to pay the consideration in terms of the MOU. It was specifically pleaded that the MOU was executed between the plaintiff and the defendant no.1 and the defendant nos.2 and 3 are not its signatories and the defendant no.4 is not a party to the agreement, but is merely a witness. To the pleading in the plaint that amount of Rs.15 lakhs is disbursed in favour of the defendant no.4, it was pleaded that the said papers/vouchers do not bear the signature of defendant nos.1 to 3 and therefore, this amount cannot be considered as the amount received by the defendants and it is also doubted that without consent of the defendant nos.1 to 3, the payment is made to defendant no.4.

8 Pleading that the plaintiff has failed to act in terms of the MOU, it was urged, that he was disentitled for any injunction, on account of non-joinder of the necessary party as well as on the ground that the *prima facie* case, balance of convenience and irreparable loss and hardship do weigh in his favour.

9 On the application for temporary injunction, on 13/12/2021, an ad-interim order was passed, restraining the defendant nos.1 to 3 from creating third party interest in the suit property till 22/12/2021. However, by the impugned order passed on 4/3/2022, the application for temporary injunction came to be rejected, by recording that prima facie, the plaintiff is not entitled to a relief of injunction against the defendants in connection with the suit property as the MOU was entered into only between the plaintiff and defendant no.1 who had not given any information to the defendant nos.2 and 3, about the sale of property. The learned Judge recorded a finding that there is no privity of contract between the plaintiff and defendant nos.2 and 3 in connection with the suit property and consequently, the properties of defendant nos.2 and 3 cannot be subject matter of the suit and the argument that the defendant no.2 had received part consideration, was turned down on the ground that mere receipt of the amount from the plaintiff, cannot be ground for injunction against the defendants. Another ground on which the injunction is refused, is the payment of meager and lesser amount of Rs.25 lakhs, will not entitle the plaintiff for injunction, as he has not deposited the substantial amount of consideration even in the Court, and one cheque given in favour of defendant no.3 was dishonored and therefore, the plaintiff has committed breach of terms of MOU.

10 On a careful reading of the Memorandum of Understanding dated 14/1/2018, which is the pivotal document in the contest between the plaintiff and the defendants, it can be discerned that the MOU executed between the parties is for consideration of Rs.One crore and the defendant Jayant Vanechand Vasa described himself in plurality, with an understanding to cover himself as well as his legal heirs, administrator, assignee and the description of the property is land admeasuring 8H 51R in Gat No.142 i.e. the entire property belonging to defendant nos.1 to 3.

 The Memorandum of Understanding contain a specific recital to the effect that, the defendant no.1 himself and his sons Jigar and Tarang have their names recorded on the suit property as they are self acquired property being in their possession, and since he is in actual possession of the suit property, he is in a position to sale or dispose off the same by all legal means and authority.

 Stipulating a financial exigency, requiring a huge amount, the Memorandum of Understanding is executed after due deliberation, by stipulating specific terms and conditions. The MOU also record, that the two sons i.e. Jigar and Tarang are appraised of the transaction of sale and they have received the consideration through distinct cheques, the details of which were also set out in the said agreement. The document acknowledge receipt of an amount of Rs.25 lakhs by defendant no.1, defendant

no.2 - Jigar and defendant no.3 Tarang by distinct cheques of Rs.25 lakhs each and an amount of Rs.25 lakhs is acknowledged to have received in cash.

11 The reading of the MOU, clearly indicate the implied authority vested in the defendant no.1 on behalf of defendant nos.2 and 3, who entered into a transaction with the plaintiff on their behalf. The MOU specifically contemplate such an authority with the express knowledge of defendant nos.1 and 2. Assuming for a moment that there was no such express authority, by implication, it can be read into the MOU as well as the subsequent conduct of the defendant nos.2 and 3 who had received distinct cheques from the plaintiff as a part of consideration. The conduct of the parties i.e. plaintiff on one hand and defendant nos.1 to 3 on the other, when interpreted objectively, is indicative of the defendant no.1, acting on behalf of defendant nos.2 and 3 as an agent and dealing with their property.

It is the case of an implied agreement of defendant nos.2 and 3, where the defendant no.1 the father, held the authority to himself to deal with their distinct parcel of property, recorded in their name in the record of rights in favour of the plaintiff and a case of implied agency, has been clearly established.

12 The Civil Judge, Sr. Division, however, has failed to acknowledge the implied agency of defendant no.1 acting on part

of defendant nos.2 and 3, while executing the MOU with the plaintiff, particularly, when the MOU itself acknowledges the receipt of the cheques by defendant nos.2 and 3 separately. It is a different case that one of the cheques had dishonored. Moreso, in the entire written statement, it has been jointly filed by defendant nos.1 to 3, the defendant nos.2 and 3 never questioned the binding effect of the agreement executed on their behalf by the defendant no.1 with the plaintiff, but only pleaded that there was no compliance of the terms of the agreement at the instance of the plaintiff which entitles him for a decree for specific performance.

Without adverting itself to the stand of the defendant nos.1 to 3 in the reply filed to the application for temporary injunction, the learned Judge has clearly erred in refusing the injunction on the ground that there was no privity of contract between the plaintiff on one hand and the defendant nos.2 and 3 on the other. Another gross error at the hands of the learned Judge is a finding recorded in the impugned order, that the plaintiff has not deposited substantial amount of the consideration. It was not open for the learned Judge to render such a finding, particularly when the MOU itself acknowledged that the consideration of the agreement was Rs. One crore though the total consideration fixed for the transaction was Rs.13,75,00,000/-.

The egregious reasoning in the impugned order do not permit me to sustain the same, and I am constrained to set aside the same.

Refusing injunction in favour of the plaintiff by recording that no *prima facie* case exists in its favour, the factor of irreparable loss and hardship which has been weighed in favour of the defendant is also equally fallacious. The learned Judge has approached the entire issue with an erroneous approach.

13 In the aforesaid facts involved, the plaintiff deserve an injunction, but subject to imposition of some condition.

The learned counsel for the appellant, Dr. Chandrachud, voluntarily state that the plaintiff shall deposit the 50% amount of the consideration for the suit property within a period of two weeks from today, and he undertake to submit a bank guarantee of the balance amount of 50% of consideration agreed within a period of four weeks.

Subject to the compliance of the above, the application filed by the plaintiff below Exhibit-5 is allowed.

The Impugned Order is quashed and set aside.

The Appeal stands allowed in aforesaid terms.

(SMT. BHARATI DANGRE, J.)