

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

**APPEAL FROM ORDER NO. 694 OF 2022
WITH
CIVIL APPLICATION NO. 85 OF 2022
IN
APPEAL FROM ORDER 694 OF 2022**

Pradipkumar Jamuar

... Appellant

V/s.

M/s. JWR Logistics Pvt. Ltd.

...Respondent

Mr. Sajid Shamim, for the Appellant.

Mr. Deepak Thakre, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATED : 25th November, 2022

P.C.:

1. Appeal is questioning the order passed below in Exhibit-5 in Special Civil Suit No. 466 of 2018, which was delivered on 14/02/2019 by the 5th Joint Civil Judge Senior Division, Panvel. By an order impugned, the appellant/defendant to the aforesaid suit for specific performance is restrained from causing disturbance to the possession of plaintiff and also restrained from creating a third party interest.

2. The suit of the respondent/plaintiff for specific performance of oral agreement is based on the meeting dated 08/07/2009. The said

suit claims that there were certain issues as regards to the revenue entries in relation to the suit property and as such it was orally decided that the said revenue entries, first will be corrected and then the appropriate sale deed will be executed by the appellant/defendant in the favour of the plaintiff/respondent. As such, the suit contains a clause that the suit land was agreed to be sold for a consideration of Rs. 2,33,00,000/- based on the oral agreement of sale dated 08/07/2009 and 14/09/2009.

3. It is further pleaded by the respondent in his plaint that a cause of action for filing of the aforesaid suit has arose on 31/07/2018 when in spite of the notice being received by the appellant/defendant, the appellant has failed to execute the sale deed.

4. The Trial Court has proceeded to grant injunction by observing that there is every likelihood that the respondent/plaintiff will succeed in the suit and in case if the temporary injunction is not granted, the appellant is likely to create a third party interest.

5. The contentions of the learned Counsel for the appellant/original defendant are, the injunction is granted by the court below without considering the very principles which are to be adhered to while deciding such prayer. He would urge that neither

the findings are recorded on the *prima-facie* case, balance of consideration and irreparable loss nor reasoning to that effect are furnished. He would further urge that the suit itself is barred by limitation as the same is based on an oral agreement of sale dated 08/07/ 2009 as the limitation for suit of specific performance is three years. According to him, subsequent thereto in relation to land survey no. 18 owned by the appellant/defendant by an agreement for sale was entered into on 29/12/2010 for consideration of Rs. 1,15,00,000/- and as such had it been the intention of the appellant to sell the land in question to the respondent/plaintiff, there would have been an agreement of sale in writing or reference to that effect in black and white.

6. Mr. Thakre, learned Counsel appearing for the respondent would strenuously urge that the respondent/plaintiff has come to the rescue of the appellant as the appellant was not in a position to get the revenue record corrected and as such has assured that the sale deed will be executed only after the correction of the revenue record and as such unconditionally put the respondent in possession of the suit property.

7. According to him the another suit for declaration of alleged oral

agreement is null and void, and is already pending at the behest of the respondent based on oral agreement of sale in relation to the suit property. He would further urge that the settled possession of the respondent has prevailed before the court below while granting temporary injunction.

8. As such, he would urge that the appeal is without any merit and is liable to be dismissed.

9. I have appreciated the said submissions.

10. As regards the execution of the registered deed in relation to the land Survey No. 18 on 29/12/2010 for consideration of Rs. 1,15,00,000/- is not in dispute and that is even not a bone of contention.

11. Before the aforesaid deed was executed, it is the contention of the respondent/plaintiff that on 08/07/2009 and subsequent thereto i.e. on 14/09/2009, the suit property was agreed to be sold to the plaintiff and possession was to be handed over. It is also claimed that such understanding was an oral understanding.

12. The fact remains that the respondent/plaintiff is unable to show as to whether any consideration is parted based on the aforesaid oral agreement or passing of possession in his favour.

13. The fact remains that even if the oral agreements of 2009 are taken into account the suit itself is barred by limitation.

14. There is hardly any material on record to infer that the respondent/plaintiff was put in lawful possession as against oral agreement of sale. Even the term of such oral agreements are not spelt out.

15. In this background, an order of the court below granting temporary injunction is in complete disregard to the very principles which are required to be considered under the provisions of Order XXXIX Rule 1 of the Code of Civil Procedure.

16. The order impugned as such is not sustainable as the same is contrary to the law and is accordingly quashed and set aside.

17. The prayer of the respondent/plaintiff for grant of temporary injunction stands rejected. The appeal against order is allowed in above terms.

18. In view of above, Civil Application No. 85 of 2022 is also stands disposed of.

(NITIN W. SAMBRE, J.)