

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.48 OF 2022
ALONG WITH
INTERIM APPLICATION NO.235 OF 2022

Manish S/o. Vishwanath Nemani &]
Anr.] ... Appellants

Vs.

Sunil G. Bhatt & Ors.] ... Respondents

...

Mr. Ashok M. Saraogi for the appellants.

Mr. Indraprakash Tripathi with Mr. Bhagyashri Gawai i/b Mr. C.K.
Tripathi for respondent No.1.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 11TH APRIL, 2022.

P.C. :-

1. Heard the learned counsel Mr. Saraogi for the appellants/original plaintiffs and the learned counsel Mr. Tripathi appearing for respondent Nos.1 and 2.

2. The short question that arises for consideration is about the

legality of the order passed by the Additional Principal Judge, Bombay City Civil Court, Dindoshi on 03/08/2021, when the plaint is returned to the plaintiffs to be filed before the appropriate court, considering the relief that is sought and it being recorded that the suit is valued for the purpose of court fees as well as jurisdiction, on the basis of the value of the agreement, which is Rs.2,50,00,000/- and, therefore, the court has no jurisdiction to entertain the suit.

3. The appeal raises a challenge to the said order in the backdrop of some brief facts.

4. The plaintiffs is a *bonafide* purchaser in respect of a flat situated at Alta Monte Tower 'C' Co-operative Housing Society Limited, Kurar Village, Wester Express Highway, Malad (East), Mumbai. The plaintiffs claim that defendant Nos.1 and 2 purchased the said flat under an agreement from the original builder on 27/08/2013. The plaintiffs agreed to purchase the said flat and, accordingly, a MOU came to be executed between the parties on 29/03/2021, where the Vendors agreed to sell and transfer to the purchasers their right, title and interest in the said flat for a consideration of Rs.2,50,00,000/- and an amount of Rs.11 lakhs was accepted as earnest money.

5. The plaintiffs pleaded that pursuant to the said MoU, which was signed by the parties, the plaintiffs paid an amount of

Rs.37,50,000/- to defendant Nos.1, 2, and 3 through defendant No.4 and there is no dispute between the parties about the said fact. However, since the defendants refused to execute an agreement, though a draft agreement has been exchanged between the parties, the plaintiffs were aggrieved.

6. The plaintiffs filed a suit seeking a restrain order against the defendants from creating any third party rights in respect of the said flat in any manner whatsoever. The suit being numbered as S.C. Suit No.1565 of 2021 specifically pleaded in paragraph No.14 that the plaintiffs are filing the said suit only for the limited purpose of protecting their rights and reserve their rights to file substantive suit for specific performance of the Agreement if the need so arises, depending upon the cause of action. The declaration sought, is to the effect that the defendants have no right to create third party rights in respect of the subject flat. In the wake of the prayer being made in the suit, the court fee was paid in terms of Section 6(iv)(j) of the Maharashtra Court Fees Act in respect of prayer cause (A) and in respect of prayer clause (B), where a permanent injunction was sought, the court fee of Rs.1,000/- was paid.

7. On 03/08/2021, on the Assistant Registrar (Civil) of the Bombay City Civil Court, raising an objection in respect of payment of court fees as well as jurisdiction of the court, the Bombay City Civil Court heard the learned counsel for the

plaintiffs and perused the plaint.

8. Referring to the nature of transaction between the parties culminated in the form of MoU and payment of Rs.37,50,000/- to the defendants being not in dispute, the learned Judge considered the argument of the plaintiffs qua the relief sought in the proceedings, which was worded in the negative terms i.e. restraining the defendants from creating any third party interest. The learned Judge, recording that the plaintiffs without taking leave of the court to omit the relief of specific performance, intend to get adjudicate the issues which are directly dealing with the specific performance of agreement and, therefore, the plaintiffs ought to have valued the suit for the purposes of court fees and jurisdiction on the basis of the agreement i.e. Rs.2,50,00,000/-, directed return of the plaint to the plaintiffs to file the same before the appropriate court.

9. The learned counsel for the respondents submits that the suit property not available for specific performance, since it is already sold to a third party on 16/12/2021 i.e. during the pendency of the present appeal and possession is also delivered along with the transfer of shares. The learned counsel further submits that the agreement with the plaintiffs is terminated and, that is the specific reason, why the plaintiffs have not filed a suit for specific performance and indirectly sought a declaration against the defendants not to create any third party rights.

10. The principles of *dominus litis* permit a party to plead and seek a relief, what he intends to claim. The plaintiffs have chosen not to seek the relief of specific performance and by specifically pleading that they reserve their rights to file substantive suit for specific performance, when the cause of action arises, merely seek a relief of negative act of defendants in terms of Section 42 of the Specific Reliefs Act. The plaintiffs have valued the suit under 6(iv)(j) of the Maharashtra Court Fees Act for seeking a declaration, though in a negative form against the defendants without any consequential relief, as the relief of declaration is not being susceptible to monetary evaluation.

11. The learned Judge, only on the footing that he has not sought a relief of specific performance of the agreement, which agreement is valued at Rs.2,50,00,000/- has chosen to return the plaint. In any case, if a declaration is sought, which is not coupled with a relief of specific performance, the only entry that can be attracted is Entry No.6(iv)(j) and as far as Entry No.6(iv)(d) is concerned, it is an entry for claiming right, title, interest and ownership of immoveable property and the said entry could not have been invoked. Since the declaration is not susceptible for any monetary value, the suit is valued on the basis of Entry No.6(iv)(j).

12. The impugned order, therefore, cannot be sustained and the

matter needs to be tried by the Bombay City Civil Court at Dindoshi, considering the declaration as prayed in prayer clause (A) and a permanent injunction as prayed in prayer (B) of the plaint. The matter is, therefore, remanded to the learend Judge, Bombay City Civil Court, who shall on hearing the respondents consider the entitlement of the plaintiffs for grant of relief as prayed for in the plaint.

13. Needless to state that as far as the merits of the dispute between the parties are concerned, I have not expressed any opinion on the merits of the matter and all contentions of the parties are kept open.

14. The appeal is disposed off in the above terms.

15. In view of the disposal of the appeal, all interim applications shall stand disposed off.

[SMT. BHARATI DANGRE, J.]