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

**APPEAL FROM ORDER NO. 773 OF 2022
WITH
INTERIM APPLICATION NO. 16921 OF 2022**

Shri Natwarsinh Ramsinh Chauhan .. Appellant
vs.
Shri Ganpatsinh Situbhai Chauhan and ors...Respondents

Mr. P.D. Dalvi a/w Mr. Girish R. Agrawal, for Appellant.
Ms. Varsha Palav a/w Mr. Anuj Tiwari i/b The Laureate, for
respondents.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 14, 2022

P.C. :

1. Heard learned counsel for the appellant and the respondent no. 5. Shri Dalvi invited my attention to the findings recorded by the trial Court rejecting the application Exhibit 93 for temporary injunction restraining defendant no. 5 from constructing a petrol pump. Shri Dalvi submitted that the appellant- original plaintiff was put in possession of the suit property which is around 5 acres pursuant to

agreement of sale executed by defendant no. 1 in favour of the plaintiff on 24/12/1993. The consideration was Rs. 1 lakh per acre. Shri Dalvi submitted that since the land is situated in the Union Territory i.e. Dadra Nagar Haveli, permissions are required from the competent authorities before the actual sale deed could be executed. Accordingly, Shri Dalvi was at pains to point out that every possible effort was being made by the plaintiff to obtain the necessary permissions which the defendant no. 1 was well aware of. The suit for specific performance, declaration and injunction was filed in the year 2011. Shri Dalvi submitted that during the pendency of the suit, only because the prices of the land increased, defendant no. 1 entered into the transaction of sale with a view to defeat the agreement of sale executed in favour of the plaintiff. According to Shri Dalvi, an application Exhibit 5 for temporary injunction was filed in 2011 itself, but the same remained pending. In any case, the plaintiff did not press for the application Exhibit 5 as the suit was proceeding and even at the stage of filing of the application Exhibit 93, evidence of plaintiff is over. Shri

Dalvi submitted that on plaintiff getting the knowledge that defendant no. 1 entered into several transactions in respect of the suit property and ultimately, it was defendant no. 5, the last purchaser of the suit property, who then intended to set up a petrol pump on the said land, that Exhibit 93 was filed on 06/05/2022. By the impugned order dated 05/07/2002 passed below Exhibit 93, the application Exhibit 93 came to be rejected. During the pendency of the application Exhibit 93, interim order of status-quo was granted by the trial Court on 13/06/2022 which was continued during the pendency of this appeal.

2. Shri Dalvi submitted that since the evidence of the plaintiff is already recorded, as the suit is of the year 2011, the same could be expedited and the interim order already in operation could be continued till then. According to Shri Dalvi, the plaintiff is in possession of the suit property and it is not open for the defendant no. 5 to disturb the plaintiff's possession in the manner as is sought to be done. Shri Dalvi further submitted that the sale deed could not be executed only because the plaintiff was time and again

pursuing the matter with the authorities for obtaining the relevant permissions. In the meantime, the defendant no. 1 has taken advantage of the situation and has entered into the transaction with defendant no. 2, defendant no.3, defendant no.4 and ultimately with defendant no.5. According to him, the plaintiff should not be made to suffer and the application Exhibit 93 deserves to be allowed.

3. I have gone through the impugned order. The agreement of sale of which specific performance is sought by the plaintiff is dated 24/12/1993. The suit for specific performance, declaration and injunction was filed in the year 2011. Though the question of limitation is a mixed question of law and fact which will ultimately be decided at the time of trial, fact remains that the suit for specific performance was filed almost after 8 years from the date of execution of the agreement of sale. Even during the pendency of the suit, till June 2022, there was no injunction operating. The trial Court has observed that since the suit is already filed and as during the pendency of the suit, some transactions have been entered into by defendant no.

1 in respect of the suit property, the rights of the plaintiff, if any, are protected by virtue of the principle of lis pendens. The trial Court has further observed that whatever the decree that will be passed would bind the defendants. Observations are then made that the defendants are carrying on the activities at their own risk. The trial Court has observed that if the decree is passed against the defendants, then they would not be entitled to claim any equity or compensation from the Court. Even learned counsel for the defendant no. 5 has submitted that the defendant no. 5 undertakes not to claim any equity in case ultimately the suit is decided against defendant no. 5. An undertaking to that effect be filed before the trial Court within a period of 2 weeks from today. Thus, the activities carried on by the defendant no. 5 in respect of the suit property is at its own risk. It must be noticed that the trial Court in paragraph 35 observed that the agreement dated 24/12/93 has been acted upon and plaintiff was inducted into the possession of the suit property, however, the trial Court recorded that there is nothing on record to indicate

that the amount of Rs.5 lakhs towards consideration was paid to defendant no.1. It appears that this finding is recorded as the submission made by the plaintiff. The trial Court has upon considering the revenue record observed that there is nothing to indicate that plaintiff was put into possession of the suit property.

4. Be that as it may, in the present facts, this is not a case where I find any error in the approach of the trial Court in refusing to grant any interim relief in favour of the plaintiff on the application made at Exhibit 93. As indicated earlier, the plaintiff is adequately protected by virtue of the observations made by the trial Court in paragraph 45 and also the undertaking which the defendant no. 5 would now be filing in this Court. I do not see any perversity in the findings of the trial Court.

5. Considering that the suit is of the year 2011 and evidence of the plaintiff is already recorded, the trial Court is requested to hear and decide the suit expeditiously and in any case, by the end of April 2023.

6. The parties to co-operate in the expeditious disposal

of the suit and will not seek any unnecessary adjournment.

7. It is made clear that the observations made by me are in the context of deciding the appeal from order and any observations made by me in the appeal from order or those made by the trial Court in the impugned order will not influence the final outcome of the suit which shall be decided on its own merits and on the basis of pleadings and evidence adduced.

8. At the request of learned counsel for the appellant, the status-quo granted by this Court to continue for a period of four weeks from today, though the request is opposed by learned counsel for respondent no.5.

9. The Appeal from order is disposed of. In view of disposal of the appeal from order, interim application also stands disposed of.

(M. S. KARNIK, J.)