

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 611 OF 2019

IN

FIRST APPEAL NO. 175 OF 2019

Shri. Kirtibhai Hargovandas Patel

...Applicant/
Appellant

Versus

Shri. Jamsubhai Kuvaria Patel & Ors.

...Respondents

Mr. Mandar Soman a/w Mr. Hardik Joshi for the Applicant/Appellant.

CORAM : R.I. CHAGLA J

DATE : 22 November 2022

ORDER :

1. Heard Mr. Soman, learned Counsel appearing for the Applicant/Appellant.

2. First Appeal has been filed challenging the judgment and decree dated 4th August 2018 passed in Civil Suit No. 47 of 2010 by the learned Civil Judge, Senior Division, Dadra and Nagar Haveli Silvassa.

3. Mr. Soman has stated that the Appellant has been given to understand that the Respondents are trying to create third party interest in the suit property. The Respondents have been served with the First Appeal in February 2022 and Mr. Soman undertakes to file Affidavit of Service within a period of one week from the date of this order.

4. The original Suit was filed for specific performance of agreement dated 15th July 2008 in respect of the suit property. The original Suit filed for specific performance and injunction of the suit property was disposed of and decreed by directing the Defendants to refund the amount of Rs. 34,75,000/- to the Plaintiff along with interest of 6% per annum from the date of this order. This was upon the finding that the Suit was filed by the Plaintiff in collusion with the Defendants to seek direction from the Court against the Government / Collector to grant them permission to execute the sale deed without intentionally making the Government and Collector a party. This finding has been arrived at despite the Court holding that the Defendant had admitted receipt from the Plaintiff of the amount of Rs.21,75,000/- and that the Defendants had contended that they had repaid the amount to the Plaintiff. However, the Defendant could

not produce any evidence of re-payment.

5. The Appellant has filed the First Appeal being aggrieved with the findings in the judgment dated 4th August 2018 by which prayer for specific performance and injunction of the suit property in the Suit filed by the Appellant was rejected. The present Application has been made for *status quo* to be maintained in respect of the suit property, as the Respondents are attempting to create the third party interest in the suit property.

6. Having considered the present Application for *status quo* to be maintained in respect of the suit property, in my view, it would be necessary to grant the relief sought, considering that the First Appeal arises from the non-grant of specific performance of the suit property which had been sought in the Suit. The Suit was disposed of and decreed by directing the Defendants to refund the amount paid by the Plaintiff despite issues having been decided in favour of the Plaintiff. This is in view of the finding of the Court that there is collusion between the Plaintiff and Defendant to seek direction from the Court against the Government / Collector to grant and execute the sale deed. In my *prima facie* view, there are inconsistencies in the

findings of the lower Court. Thus, the Suit property of which specific performance has been claimed in the Suit requires to be protected.

7. In that view of the matter, keeping the rights and contentions of the parties open, *status quo* shall be maintained in respect of the suit property.

8. Advocates for the Appellant shall serve notice of this order on the Respondents and shall file appropriate Affidavit of Service on or before the next date.

9. Civil Application No. 611 of 2019 is accordingly, disposed of.

10. List the First Appeal No. 175 of 2019 for admission on 5th December 2022.

[R.I. CHAGLA J.]