

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

**SECOND APPEAL NO.28 OF 2021
WITH
INTERIM APPLICATION NO.1277 OF 2019
IN
SECOND APPEAL NO.28 OF 2021**

Ramchandra Bapu Dhaigude ...Appellant

Versus

Subhash Shankar Suryawanshi ...Respondent

...

Mr. Nikhil Wadkar with Ms Faiza Shaikh i/b. Mr. Nandu Pawar for the Appellant.

Mr. Kuldeep U. Nikam for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th MARCH, 2022.

P.C.:-

1. The Appellant herein has sought to protect his possession of the suit property pending hearing of the second appeal.

2. The Appellant-Plaintiff had filed a suit for specific performance of agreement for sale dated 17/04/2000 whereby the Respondent-Defendant had agreed to sell the suit property bearing Gat No.4 admeasuring 0.58 R situated at village-Padli, Satara for sale consideration of Rs.25,000/-. The Respondent -Defendant claimed that he had availed loan of Rs.20,000/- from the Plaintiff and as a security executed an

agreement for sale dated 17/04/2000. The Respondent-Defendant claimed that he has repaid the said loan. The learned Judge dismissed the suit and the appeal has also been dismissed by the impugned order. In a challenge to the said judgment in second appeal, the Appellant has filed this application for interim relief.

3. Mr. Nikhil Wadkar, learned counsel for the Appellant states that the agreement prima facie shows that the Appellant was put in possession of the suit property. He submits that the Appellant was always ready and willing to perform his part of contract. He submits that even if the Appellant was not entitled for specific relief, the courts below ought to have protected his possession in terms of Section 53-A of the Transfer of Property Act. In support of his contention, he has relied upon decision of this Court in ***Balasaheb Manikrao Deshmukh and Anr. Vs. Rama Lingoji Warthi, AIR 2000 Bombay 337***.

4. Per contra, Mr. Kuldeep Nikam, learned counsel for the Respondent states that the Respondent is in possession of the suit property. He states that no interim relief was operating in favour of the Appellant either before the Trial Court or the Appellate Court. He therefore claims that no case is made out for interim relief.

5. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The records indicate that the Appellant and the Respondent had entered into an agreement for sale dated 17/04/2000 in respect of Gat No.4 admeasuring 0.58 R at village Padali, Taluka-Khandala, District Satara for sale consideration of Rs.25,000/-. The agreement indicates that the Respondent had accepted part payment of Rs.20,000/- and handed over possession of the suit property in favour of the Appellant. Since the Respondent failed to execute the sale deed within two years, the Appellant issued a notice dated 12/12/2003 and again on 04/07/2005 calling upon the Respondent to execute the sale deed by accepting the balance sale consideration of Rs.5,000/-. The Respondent failed to execute the sale deed hence the Appellant filed a suit for specific performance.

7. The Respondent has admitted having executed the agreement for sale but has raised a defence that it was towards security for repayment of loan of Rs.20,000/-. The Respondent has also denied having put the Appellant in possession of the suit property and further

claimed that it was agreed between the parties that the transaction would not be acted upon. The Respondent claims that he had repaid the said amount of Rs.20,000/- to the Appellant and as such he is not liable to execute any sale deed in favour of the Appellant.

8. It is pertinent to note that both the courts below have recorded a finding that the Appellant and Respondent had in fact, entered into agreement for sale whereby Respondent had agreed to sell the suit property to the Appellant for sale consideration of Rs.25,000/-. No challenge is raised to these findings. It is on record that the Appellant has paid sum of Rs.20,000/- and the balance of Rs.5,000/- was to be paid as on the date of execution of the sale deed. The Trial Court has disbelieved that the Respondent has repaid Rs.20,000/-. The learned Judge has disbelieved the case putforth by the Respondent-Defendant that the agreement was towards security of loan transaction and that the Defendant had repaid the amount of Rs.20,000/-. The learned Judge declined to grant relief of specific performance mainly on the ground that the suit was filed beyond prescribed period of limitation.

9. The Courts below have relied upon the oral evidence to hold that the Appellant was not put in possession of the suit property. It is

pertinent to note that the agreement, which was reduced in writing clearly indicates that the Appellant was put in possession of the suit property. The oral evidence, relied upon by the Courts below, is contrary to the terms of the agreement. Prima facie, oral evidence which is contrary to the terms of the agreement is not admissible in terms of Section 92 of the Indian Evidence Act, particularly when the Courts below have disbelieved the case of loan transaction.

10. The agreement prima facie proves that the Appellant was put in possession of the land. Apart from the oral evidence of the Respondent, there is nothing on record to prima facie indicate that the Respondent was in actual possession of the suit property. The relief of specific performance has been dismissed as time barred. The question is whether the Appellant is entitled to protect his possession despite rejection of relief of specific performance.

11. In ***Balasaheb*** (supra) on similar facts, the learned Judge of this Court has held as under:-

“14. There was agreement between the appellants and the respondent to sell and purchase the property. It was in pursuance of this agreement that the present appellants were put in possession of the property. There is finding that the present appellants were ready and willing to perform their part of the contract and

that there remained nothing to be done by the Plaintiffs. Under these circumstances, the protection under Section 53-A could not be refused only because their suit was time barred.”

12. In the instant case the Appellant was put in possession of the suit property. He had paid the substantial sale consideration. He was ready to repay the balance amount of Rs.5,000/- and had called upon the Respondent to execute the sale deed on receipt of the balance amount. Under such circumstances, the Appellant was entitled to protect his possession unless dispossessed with due process of law. The Appellant apprehends dispossession in view of dismissal of suit and appeal. Considering these apprehensions and the facts of the case, interim relief of specific performance cannot be declined solely on the ground that no interim relief was operating earlier.

13. Considering the above facts and circumstances, in my considered view status-quo needs to be maintained till the appeal is finally decided on merits. Hence, the application is allowed in terms of prayer clause (b). The Respondent is restrained from disturbing the possession of the Appellant's possession in the suit property more particularly described in the Plaint of Regular Civil Suit No.61 of 2006 before the C.J.J.D., Khandala, pending the appeal.

14. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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