

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 55 OF 2023
IN
SECOND APPEAL NO. 720 OF 2022
WITH
SECOND APPEAL NO. 720 OF 2022
WITH
CIVIL APPLICATION NO. 14838 OF 2022
IN
SECOND APPEAL NO. 720 OF 2022

Dr. Laxman Ramrao Nagargoje and Ors.	... Applicants
<i>Versus</i>	
Suresh Premraj Mutha	... Respondent

...

Mr. Rameshwar F. Totala i/b. Mr. Swapnil V. Lohiya – Advocate for Applicants

Mr. Sachin S. Deshmukh – Advocate for sole Respondent

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CORAM : GAURI GODSE, J.
DATE : 22nd February, 2023

PER COURT :

1. This Review Application is filed by the respondents in the Second Appeal. The Review Application seeks to review the order dated 17th January, 2023 passed in Second Appeal. By said order Second Appeal is admitted on the following substantial questions of law :
 - a) Whether the suit for specific performance could have been dismissed without there being any findings

recorded with respect to the sale agreement being signed by defendant no.2 ?

- b) Whether specific performance could have been refused without there being any findings recorded with respect to the contentions of the appellant regarding authorisation letter executed on 5th March, 1997, being binding on the defendants ?

- 2. The learned counsel for the review applicants submitted that there is an error apparent in the said order, hence, it is necessary to review the said order and dismiss the second appeal by recalling the order admitting the second appeal. Before dealing with the submissions made by the learned counsel for the review applicants, it is necessary to record certain facts of the matter. The review applicants are the original defendants. The respondent in the review application is the original plaintiff. The plaintiff had filed Special Civil Suit No. 290 of 2001 for specific performance, directing the defendants to execute the sale-deed in respect of the suit property and handover possession of the suit property as shown in green colour map annexed to the plaint. The suit property is a land admeasuring 33 gunthas bearing plot nos. 1, 6 and 7 out of Gat no.105 at village

Nakshettarwadi. It is the case of the plaintiff that, the suit property was purchased by 15 persons including the defendants by registered sale deeds dated 20th December, 1982 and 7th January, 1983. It was further the case of the plaintiff that by virtue of partition deed executed on 11th September, 2000 amongst the 5 joint owners, plot nos.1, 6 and 7 were allotted to the defendants. Defendant no.1 was allotted plot no.7 and defendant no.2 was allotted plot no.6 and defendant no.3 was allotted plot no.1 and remaining plots were allotted to other twelve owners. Since plaintiff was interested in purchasing the plots he approached the defendants and other four persons namely, Vasant, Ramesh, Ulhas and Omkar. These persons represented that they all were the owners of the plots forming part of Gat no.105. The defendants and said four persons had represented that defendant no.2 i.e. Dinkar Borikar and Vasant Pimplapure were having power of attorney to deal with said plots and had full authority to sell it. As per the representation and assurances of the defendants and said four persons the plaintiff had agreed to purchase all the seven plots in all admeasuring 1 acre 37 gunthas for consideration of Rs. 3 lakhs per acre. Thereafter, agreement for sale was executed on 10th

March, 1999 by said four persons in favour of the plaintiff. It was on the basis of this agreement for sale that the suit was filed for specific performance against the defendants.

3. The defendants appeared in the suit and filed written statement and denied the suit plaint. The learned trial judge had framed issues with respect to the suit property being allotted to defendants and others as pleaded by the plaintiff, whether the defendants agreed to sell suit plots to the plaintiff and executed an agreement for sale on 10th March, 1999, as well as whether the plaintiff was ready to perform his part of contract. The learned trial judge had answered these issues in the affirmative and decreed the suit, thereby directing the plaintiff to deposit Rs.2,40,000/- within one month towards the consideration of the plots to be given to the defendants. The learned trial judge thus directed that, on deposit of amount of Rs.2,40,000/- by the plaintiff, the defendants shall execute the sale deed of the plots mentioned in the description of the plaint in the favour of the plaintiff.

4. Being aggrieved by the decree for specific performance, the defendants preferred First Appeal No.587 of 2007. In view of change in pecuniary jurisdiction, the said First Appeal was

transferred to the court of District Judge at Aurangabad and it was renumbered as Regular Civil Appeal No.243 of 2012. By the judgment and decree dated 12th August, 2022 the Regular Civil Appeal is allowed and the decree passed by trial court is set aside. Hence, the plaintiff filed the Second Appeal. The said Second Appeal is admitted by the order under review.

5. It is submitted on behalf of the review applicants that there is apparent error in the order admitting the second appeal. With respect to first question of law framed, the learned counsel for review applicants submitted that, there is a clear finding recorded by the first appellate court in paragraph nos.57, 58, 62, 66 and 71 of the impugned judgment with respect to agreement being signed by defendant no.2. He, therefore, submitted that since there are clear findings recorded in the impugned judgment, the first question of law framed, suffers from clear error on the face of the record. With respect to second question of law framed, the learned counsel for review applicants submitted that the ground that is framed is contrary to Section 61 to 65 of the Indian Evidence Act as well as Rule 4 Order XIII of the Code of Civil Procedure. In support of his submissions he relied upon following decisions:

- a) *Gulam Abbas and Ors. Vs. Mulla Abdul Kadar and Ors.*¹
- b) *S. Nagaraj and Ors. Vs. State of Karnataka and Anr.*²
- c) *Shantabai Shriniwas Singhee since deceased by LRs
Giriraj Shrirnivasji Singhee and Ors. Vs. Akola District
Central Co-Operative Bank Ltd. and Ors.*³

6. I have considered the submissions made on behalf of review applicants. With respect to the first question of law which is framed regarding the sale agreement being signed by defendant no.2 is concerned, it is on the question as to whether there is any finding recorded on defendant no.2 i.e. Dinkar Borikar signing the agreement not only as the power of attorney and / or authority holder of other plot holders, but also in his personal capacity being a plot holder himself. I have perused the paragraph nos.57, 58, 62, 66 and 71 of the impugned judgment. I do not find that any such finding is recorded in the said paragraphs.

7. The case of the plaintiff is that, both defendant no.2 and Vasant Pimplapure had signed the agreement as they had authority of other plot holders and they themselves were also plot holders. Since Vasant Pimplapure had already executed the sale deed,

¹ 1970(3) Supreme Court Cases 643

² 1993 Supp (4) Supreme Court Cases 595

³ 2010(6) Mh.L.J. 975

hence suit was filed against defendant no. 2 and others. It is in this context that, the first question of law is framed with reference to findings required on the point that the sale agreement was signed by defendant no. 2 for others as well as for himself being a plot holder.

8. With respect to the submissions made on the second question of law that is framed and reliance placed on the relevant provisions is concerned, there is no question of deciding the merits of the question of law framed, at this stage. The question of law with respect to applicability of the said provision of law to the question of law which is framed and thus is required to be considered and decided at the time of hearing of Second Appeal. The Second Appeal is admitted on the two questions of law already framed and appeal is still pending. At the time of framing the questions of law, there is no conclusive finding recorded on the same.
9. With respect to the decision of the Hon'ble Supreme Court in the case of *Gulam Abbas* relied upon by the learned counsel for review applicants is concerned, the reasons for reviewing the order was on the point of failure to consider a circular having

the force of law at the time of passing of the order under review. The decision of the Hon'ble Supreme Court in the case of *S. Nagraj* was concerning the issue on the stipendiary graduates succeeding in getting orders for absorption of all of them numbering in thousands and a jump in higher scale, without any adjudication on merits either in the special leave petition or even in the writ petition on assumption drawn from a vague and an incorrect affidavit filed on behalf of the State Government. Thus, the decision of the Hon'ble Supreme Court are in the context of the facts of the cases decided on merits.

10. There cannot be any debate on the powers to review an order if there is any error found apparent on the face of the record or there is failure for applying any provision of law. However, by the order under review, the second appeal is admitted on the questions of law that arise in the second appeal. The second appeal is still pending and there is no conclusive decision of the questions of law framed. Hence, the decisions of the Hon'ble Supreme Court relied upon by the review applicants are of no assistance to the submissions made.
11. With reference to the decision of this court in the case of *Shantabai Singhee*, the said decision is also with reference to

the application of the proposition of law laid down by the Hon'ble Supreme Court as referred in paragraph no.8 of the said decision. Considering that the law laid down by the Hon'ble Supreme Court was not considered at the time of passing the order under review, this court had reviewed its own order which was an order of grant of interim relief. Hence, the said decision is also of no assistance to the submissions made on behalf of review applicants.

12. In the present case by the order under review I have only framed questions of law. Though there is no requirement to record any reasons for framing questions of law, in the aforesaid paragraphs I have explained the reasons for framing the questions of law.
13. For the reasons stated above, I neither see any error apparent on the face of record nor I see non-application of any provision of law in passing the order under review. There is no apparent error in the order dated 17th January, 2023. There is no ground made out to review and/or recall the order dated 17th January, 2023, admitting the Second Appeal by framing the questions of law. There is no merit in the review application. Hence, the Review Application is dismissed.

14. Learned counsel appearing for the appellants submit that, the application for confirmation of interim relief is still pending and there is no reply filed for opposing the application for interim relief. Learned counsel for respondents in second appeal prayed for some time to file affidavit-in-reply.
15. Respondents in second appeal are granted two weeks time to file affidavit-in-reply.
16. List the Civil Application No.14838 of 2022 on 15th March, 2023, for confirmation of interim relief.
17. Interim protection granted on 19th October, 2022 to continue till next date.

[GAURI GODSE]
JUDGE