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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.602 OF 2021

- | | | | |
|--------|----------------------------------|-----|---|
| 1. | Rajanibai w/o Prakash Attarde | | |
| 2. | Sau. Rajini Baliram Choudhari | ... | Appellants |
| Versus | | | |
| 1. | Yeshwant s/o Ananda Patil | | |
| 2. | Kishor s/o Ramkrushna Mahajan | | |
| 3. | Girish s/o Ramkrushna Mahajan | ... | Respondents
(plaintiffs) |
| 4. | Shashikala w/o Hiralal Chaudhari | | |
| 5. | Pushkaraj s/o Hari Chaudhari | ... | Respondents
(original defendant nos. 1 and 2.) |

...

Advocate for Appellants : Mr. Madake Datta A.
Advocate for Respondent Nos.1 to 3 : Mrs. V.P. Dhorde

...

CORAM : S.G. MEHARE, J.

DATED : AUGUST 25, 2023

ORDER :-

1. Heard the respective counsels.
2. Learned counsel for the appellants would submit that since they are the bona fide purchasers of the land, they are entitled to contest the suit and appeal as if they are the original landlords. Claiming to inherit or succeed the rights of the landlord, he would argue that none of the Courts considered that time was the essence of the contract and the plaintiffs failed to perform their part of the

contract. Hence, in terms of the agreement to sell, the contract was automatically ceased, and the plaintiffs had lost their right to claim the specific performance. The evidence reveals that the plaintiffs were well aware that the co-owner Hiralal, had died. However, their explanation was that after the death of Hiralal, the wife and the co-owner assured them that they would execute the sale deed. However, instead of issuing the individual notice, the plaintiffs have issued a notice in the newspaper and filed the suit for a specific performance contract. They were unaware of the pendency of the suit. Therefore, substantial questions of law have been involved in this appeal, and the appeal deserves to be admitted.

3. Per contra, learned counsel for the respondents/plaintiffs would argue that before the stipulated period of completing the contract, one of the co-owner, Hiralal, died. Through their agent, the plaintiffs requested the co-owner and the wife of deceased Hiralal to execute the sale deed, but they gave the dry assurances of performing their part of the contract. The plaintiffs were ready to pay the remaining balance and get the sale deed executed. But fraud has been played by killing time for the execution of the sale deed till the agreed period of the contract was over, and one fine morning without the knowledge of the plaintiffs, the present appellants purchased the suit land on 19.06.2014. Therefore, the learned trial Court as well as the appellate Court, have rightly held that there was no breach of

condition as regards the time was the essence of the contract. They were ready to perform their part of the contract. The 'Lis Pendens' notice was also registered with the Office of Sub Registrar. Even then, the present appellants took the risk to purchase the suit land. Hence, it cannot be said that they are bona fide purchasers. Since one of the co-owners was alive, they could not enter into the shoes of the original landlord. They had a limited defence of bona fide purchasers. They contested the suit on merit, and there are two concurrent judgments against them.

4. After hearing the respective counsels and going through the papers, it appears that the present appellants had purchased the suit land on 19.06.2014. It is not disputed that the 'Lis Pendens' notice was registered with the Office of the Sub Registrar. The appellants did not claim any relief against the predecessors in title. They pleaded that the original landlord suppressed the fact of the pendency of the suit. However, the landlord remained silent on these allegations. The present appellants were arrayed as the defendants in the suit on 15.09.2014, i.e. just three months after the execution of the sale deed. As far as the defence of bona fide purchaser is concerned, after having regard to the facts of the case and the *modus operandi* of the landlord and the appellants, it seems that the appellants were very well aware of the pendency of the suit. It appears that the appellants took a risk of purchasing the land for

which the suit was pending. It was also the fact that before the due date of the execution of the sale deed, one of the co-owners of the land, namely Hiralal died. So, in a natural course, the possibility of not complying with the terms of the agreement at the hands of the landlords cannot be ruled out because unless the names of the successors/legal heirs are recorded in 7/12 extract, the sale deed could not be executed. The explanation of the plaintiffs was that after the death of Hiralal, they contacted the co-owner and successor/legal heir of Hiralal, and they assured the plaintiffs that they would execute the sale deed. Since there was a sudden death of one of the co-owners, naturally, one would consider that his heirs and relatives were in grief. The reasons assigned by both Courts that there was no deliberate intention of the plaintiffs to protract the execution of the sale deed appear legal, proper and correct. In the situation of the death of the co-owner before the agreed date of execution of the sale deed, it was impossible to execute the same by the legal heirs/representatives of the deceased as our custom provides for post-death rituals and ceremonies. It was an unseen incident beyond anybody's expectation. The circumstances appear probable for not performing the agreed part of the contract. No one should benefit from the situation to defeat the rights of others.

5. In sum and substance, after hearing the respective counsels and going through the impugned judgments and orders, this

Court is satisfied that no substantial questions of law are involved in this case. Hence, the appeal stands dismissed at the admission stage.

(S.G. MEHARE, J.)