

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.297 OF 2023
WITH
INTERIM APPLICATION NO.3742 OF 2023**

Mohan Damodar Gawand and Ors.	...	Appellants
versus		
Janardhan Vitthal Patil and Ors.	...	Respondents

Mr Sachin S. Punde, for Appellants.
Mr. Rohit Sakhadeo with Mr Pushkar Nagpurkar for Respondent No.5.

CORAM: N.J.JAMADAR, J.

DATE : 19 APRIL 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 22 December 2022 passed on an application for grant of temporary injunction (Exhibit 5) in Special Civil Suit No.247 of 2021 whereby the said application preferred by the Appellants-Plaintiffs to restrain the Respondent Nos.1 to 4 from carrying out any development in respect of the plots situated at Village Ulave, came to be rejected.
3. Mr. Vitthal Dhaya Patil was the holder of agricultural lands situated at Village Bambavi, Tal. Panvel, Dist. Raigad. Those lands were acquired by City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) for development of a new town. Mr. Vitthal Dhaya Patil passed away in the year 1953, leaving behind his wife Ambibai, son Janardhan - Defendant No.1 and daughter Smt. Tarabai,

predecessor in title of the Plaintiffs. In lieu of the acquired lands, CIDCO allotted plots to Janardhan – Defendant No.1. Though Ambibai and Tarabai were also having an equal undivided interest in the acquired lands and the plots allotted in lieu thereof, the Plaintiffs alleged, on 31 March 2008, Defendant No.1 by exercise of an undue influence and practicing fraud, obtained a Release Deed from the said Ambibai and Tarabai. Later on, on 30 May 2008, a Tripartite Agreement came to be executed between Defendant No.1, CIDCO – Defendant No.5 and Defendant No.3, a developer. Tarabai passed away on 2 April 2020.

4. Upon the aforesaid fraud being unearthed, the Plaintiffs instituted a suit, *inter alia*, for a declaration that Tarabai, predecessor in title of the Plaintiffs, had $\frac{1}{2}$ share in the acquired lands and, thus, 50% share in the lands allotted to the Defendant No.1 under 12.5% scheme of the CIDCO on the basis of Awards being Unit Case Nos.16-C, 23-A, 23-B, and 23-C; the Release Deed dated 31 March 2008 allegedly executed by Tarabai and Ambibai was illegal, null and void and the consequential reliefs.

5. In the said suit, the Plaintiffs preferred an application for temporary injunction. By the impugned order dated 22 December 2022, the learned Judge was persuaded to reject the application.

6. Heard Mr. Punde, learned Counsel for the Appellants. Perused the impugned order and the material on record.

7. Mr. Punde endeavoured to draw home the point that the Plaintiffs had made out a prima facie case of fraud and, yet, the learned Judge declined to exercise discretion in favour of the Plaintiffs. It was submitted that Tarabai, predecessor in title of the Plaintiffs, undisputedly had $\frac{1}{2}$ share in the acquired lands and the lands came to be allotted in lieu thereof by the CIDCO. Thus, the Plaintiffs could not have been non-suited.

8. I am unable to agree with the submissions of Mr. Punde. Evidently, Tarabai and Ambibai were the sister and mother of Defendant No.1. Keeping in view this relationship, the allegations of fraud were appraised by the learned Civil Judge. It was noted that the release deed was executed in the year 2008 and during their life time, Ambibai and Tarabai, never questioned the legality and validity of the Release Deed. The institution of the suit after the demise of Tarabai and completion of the development and the grant of occupation certificate in respect of the building erected on the allotted plots, was also taken into account by the learned Civil Judge, reflecting upon the conduct of the Plaintiffs.

9. It is trite while exercising equitable jurisdiction, the conduct of the parties also assumes critical significance. Time lag between the execution of the Release Deed and the institution of the Suit is too long for comfort. The institution of the suit after the demise of Tarabai alleging that a fraud was practiced upon her, is a matter which bears upon the exercise of discretion. The learned Civil Judge has, thus,

exercised discretion keeping in view the governing principles and the fact situation of the matter. Scope of interference by the Appellate Court in a discretionary order is circumscribed. I do not find any error in the exercise of the discretion by the Trial Court to warrant interference in an appeal.

10. The Appeal, thus, stands dismissed.

11. In view of the dismissal of the Appeal, Interim Application also stands dismissed.

(N.J.JAMADAR, J.)