

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 407 OF 2019
WITH
CIVIL APPLICATION NO. 479 OF 2019
WITH
APPEAL FROM ORDER NO. 535 OF 2023

Shri. Baban Pandurang Ghule
and Ors.

...Appellants

V/s.

M/s. Nanded City
Development Construction
Company Ltd. And Ors.

..Respondents

Mr. Ameya Borwankar, for the Appellants.

Mr. Jaydeep Deo, for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Dated : 16 October 2023.

P.C. :

1. Heard learned counsel for the parties.
2. In Appeal No. 535/2023 the impugned order dated 6 April 2023 permitted the Plaintiff-M/s. Nanded City Development and Construction Company Ltd (**Nanded City**) in Special Civil Suit No. 1526/2014 to lay down an underground drainage pipeline and the Appellants herein have been restrained from obstructing

Nanded City from laying down such drainage line. Both the learned Counsels would submit that in pursuance of order passed by the Trial Court on 6 April 2023, the drainage line has already been laid down. Therefore, nothing would survive in Appeal from Order No. 535/2023.

3. So far as Appeal from Order No.407/2019 is concerned, the same arises out of a challenge raised by the Appellants to order dated 16 November 2016 passed by the Trial Court rejecting the application of Appellants for grant of temporary *injunction*. It appears that the Appellants have executed an agreement with Nanded City on 20 March 2013 for development of their land admeasuring 40Ares. Under the Agreement, Nanded City had agreed to grant 16 flats to the Appellants in exchange of their land taken up for development. It appears that the other family members of the Appellants have also executed similar agreements in respect of their shares of land. However, after execution of the agreement dated 20 March 2013, the Appellants contended that they actually own more area than 40 Ares in respect of which Agreement is executed and on that count, the Appellants refused to execute the deed of exchange with Nanded City. The other brothers (family members) however have executed the exchange deed in respect of their share of the land. Therefore, it appears that the real dispute is about ownership about the exact shares between the four brothers and in that dispute, the Developer-Nanded City has unnecessarily been embroiled. Nanded

City has accordingly filed suit for specific performance of the Agreement dated 20 March 2013. On the other hand, Appellants have filed Special Civil Suit No. 395/2016 seeking cancellation of that Agreement. In their suit, the application for seeking temporary *injunction* for restraining Nanded City from selling or creating any third party rights in respect of the construction carried out on the suit property was sought. By order dated 16 November 2016, the Trial Court has proceeded to reject the application for temporary *injunction*.

4. It also appears that in the suit filed by Nanded City for specific performance of the Agreement, the application for temporary *injunction* was partly allowed restraining the Appellants herein from creating any third party rights in respect of the suit land. The prayer of Nanded City for permission to carry out construction over the suit land has not been granted by order dated 3 October 2015. Mr. Deo would fairly concede that in view of non grant of temporary injunction permitting Nanded City from carrying out further construction on the land covered by the Agreement dated 20 March 2013, Nanded City has not carried out any construction on the said land. He would further submit that the real intention of the Appellants however is to prevent Nanded City from carrying out construction in respect of additional area for which the other brothers have executed the exchange deeds.

5. Considering the fact that Nanded City has not carried out any construction on land covered by Agreement dated 20 March

2013 as well as the fact that interim injunction has been rejected on 16 November 2016, no case is made out by the Appellants for grant of any relief in the present Appeal. So far as the land covered by Agreement dated 20 March 2013 is concerned, on account of rejection of interim *injunction* sought in favour of Nanded City by order dated 3 October 2015, Nanded City has not carried out any construction on that portion of the land covered by Agreement dated 20 March 2013. However, Nanded City cannot be prevented by an order of injunction from carrying out construction over additional area in which Appellants claim rights. In my view, therefore the Trial Court has rightly rejected the application for interim injunction. No error is traced in the impugned order dated 16 November 2016. Accordingly, both the Appeals are **disposed of**.

6. Considering the fact that both the suits bearing Special Civil Suit No. 395/2016 and Special Civil Suit No. 1526/2014 are pending for considerable period of time, it would be appropriate that the Trial Court shall proceed to decide the same in an expeditious manner.

7. With disposal of the Appeal, Civil Application No. 479 of 2019 does not survive. The same is disposed of as having become infructuous.

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SANDEEP V. MARNE, J.