

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.531 OF 2023
WITH
INTERIM APPLICATION NO. 13213 OF 2023

Rakesh Manilal Shelke

...Appellant/Applicant

Versus

1. M/s. Sai Prabhat Buildcon LLP
Partnership Firm Registered under
Partnership Act, (Through its Partner's)
2. Manoj Girdharilal Matlani
3. Vikas Sudhakar Rao Halve
4. Jagdish Kanayalal Khetwani
5. M/s. Regency Shelters LLP.
Partnership Firm Registered under
Partnership Act, (Through its Partner)
6. Mahesh S. Khairari
7. Manilal Jagu Shelke
8. Smt. Laxmi Ravindra Patil
9. Chintaman Jaggu Shelke
10. Laxman Jaggu Shelke
11. Hirendra Laxman Shelke
12. Smt. Sonal Laxman Shelke
13. Devidas Jaggu Shelke
14. Smt. Ranjana Pralhad Shelke
15. The Thane Municipal Corporation.
Almeda Road, Pach Pakhadi, Thane. (W).

...Respondents

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Mr. S.J. Shelke i/by Mr. Hemant Ghadigaonkar, for Appellant.

Mr. Kailas Dewal i/by Mr. Yash Dewal, for Respondent Nos.1, 2 & 4.

Mr. R.S. Datar i/by Ms. Druti Datar, for Respondent Nos. 5 & 6.

Mr. Anand S. Kulkarni, for Respondent No.15 -Municipal Corporation.

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CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 08, 2023.

JUDGMENT :

1. By this Appeal, Appellant challenges order dated 3 March 2023 passed by 3rd Joint Civil Judge, Senior Division, Thane rejecting Application for temporary injunction filed by Appellant/Plaintiff.

2. Appellant-Plaintiff has instituted Special Civil Suit No.663 of 2022 for declaration and injunction. In the suit Plaintiff has sought a declaration that he along with other legal heirs of late Jagu Shelke are owners of suit properties. He has also sought cancellation of Agreement for Sale and Power of Attorney dated 16 July 2015 as well as Sale Deeds dated 2 September 2020 & 31 March 2021. He has also sought decree against Defendant Nos.5 & 6 for handing over peaceful and vacant possession of the suit property. It is the Plaintiff's case that he is grandson of late Jagu Shelke, who was the owner

of suit properties. Jagu has/had five sons and five daughters and Plaintiff is the son of Manilal Jagu Shelke (Defendant No.7). That an Agreement for Sale and Power of Attorney dated 16 July 2015 in respect of the suit properties was executed in favour of Defendant Nos. 1 to 3 by accepting partial consideration of Rs.1,25,00,000/- and towards remaining consideration, Defendant Nos.1 to 3 agreed to hand over possession of constructed area of 15,000 sq.ft. (carpet area of 10,000 sq.ft.). That Commencement Certificate was obtained by Defendant No.1 for development of suit properties. Subsequently by misusing the Power of Attorney dated 16 July 2015, a Sale Deed was executed on 2 September 2020 in favour of Defendant No.1. Defendant No.1 thereafter executed Sale Deed dated 31 March 2021 in favour of Defendant No.5. That the said transactions were effected without fulfilling the condition of handing over constructed area admeasuring 15,000 sq.ft. as agreed in the Agreement to Sale dated 16 July 2015. That Defendant No.4 has mortgaged the suit properties to a finance company for raising a sum of Rs.230,00,00,000/-. On these pleadings Plaintiff has instituted the suit for reliefs as stated hereinabove. Plaintiff also filed an application at Exhibit-5 for grant of temporary injunction to restrain Defendant Nos.1 to 6 from alienating or creating third party interests in the suit property as well as to restrain Defendant No.15 –

Thane Municipal Corporation from issuing any development permission. The Trial Court has refused to grant temporary injunction and has rejected the application at Exhibit – 5 vide order dated 3 March 2023, which has led to filing the present appeal.

3. Mr. Ghadigaonkar, the learned counsel appearing for Appellant would contend that the Trial Court ought to have granted temporary injunction in favour of Plaintiff, in view of admitted position that Defendant Nos.1 to 3 have illegally sold suit properties in favour of Defendant No.5 without fulfilling the conditions of Agreement to Sale dated 16 July 2015. That the said transactions are effected out of *mala fide* intention of defeating the lawful rights of Plaintiff and other legal heirs of late Jagu Shelke. That the sale transactions are therefore void and do not confer any right, title or interest either on Defendant Nos.1 to 3 or in favour of Defendant No.5. He would further submit that the Defendant Nos.1 to 3 have cheated Plaintiff's father and other legal heirs of late Jagu Shelke by offering them constructed area in another project. That the terms and conditions agreed in the Agreement to Sale envisaged grant of constructed area in the building constructed on the suit property and that therefore offering of constructed area at another site would itself amount to violation of terms and conditions of the Agreement. That the

land on which constructed area of 15,000 sq. ft. is sought to be offered is affected by CRZ-I and is not likely to be constructed which clearly shows the intention on the part of the contesting Defendants in cheating Plaintiff and other legal heirs of late Jagu Shelke. That the facts and circumstances of the case warrant grant of temporary injunction during pendency of the suit.

4. Mr. Dewal, the learned counsel appearing for Respondent Nos.1, 2 & 4 would contend that the Appellant has no locus to file the suit. That Plaintiff's father is not aggrieved by any of the sale transactions and has been impleaded as Defendant No.7 in the present Appeal. That it is Plaintiff's father, who alone is entitled to the benefits of Agreement to Sale dated 16 July 2015. That Plaintiff is not even Class-I heir and cannot raise a claim contrary to the claim of his father. Mr. Dewal would further submit that the terms and conditions of the Agreement to Sale dated 16 July 2015 is being fully adhered to. That Shelke family has received consideration of Rs.1,25,00,000/-. So far as the balance amount of consideration is concerned, the Defendant Nos.1 to 4 were not able to immediately carry out construction at the suit property on account of an objection raised by Western Naval Command of the Indian Navy and therefore offered constructed area in other project to Shelke family, so as to satisfy the obligation under Agreement to Sale dated 16 July 2015.

That all other members of Shelke family including Plaintiff's father have agreed to the said arrangement and have accordingly executed Sale Deed dated 2 September 2020 in favour of Defendant No.1. Thus, Shelke family does not have any right, title or interest in the suit properties. That therefore no prima facie case has been made out by Plaintiff for grant of temporary injunction.

5. Mr. Datar would appear on behalf of original Defendant Nos.5 & 6. He would submit that the suit properties have been purchased by Defendant No.5 under registered Deed of Conveyance on 31 March 2021 by paying valuable consideration of Rs.105,00,00,000/- and has thereafter undertaken development work and has completed basement excavation for three buildings. That Defendant No.5 has invested huge amount for execution of the project. That being a *bonafide* purchaser of the property, Defendant Nos.5 & 6 cannot be enjoined as any order of injunction would result in huge losses to Defendant Nos.5 & 6.

6. I have also heard Mr. Kulkarni, the learned counsel appearing for Defendant No.15 - Thane Municipal Corporation.

7. After having considered the submissions canvassed by the learned counsels for the parties, it is seen that the Plaintiff is a lone member of Shelke

family, who has raised a grievance about various transactions effected with Defendant Nos.1 to 4 as well as Defendant Nos.5 & 6. It appears that the other members of Shelke family and more particularly Plaintiff's father does not have any objection to the various transactions. Plaintiff's suit is essentially premised on alleged failure on the part of Defendant Nos.1 to 3 in honoring the obligations under Agreement to Sale dated 16 July 2015. It appears that the only balance consideration which remained payable under the Agreement to Sale dated 16 July 2015 was handing over the constructed area of 15,000 sq.ft. (carpet area of 10,000 sq.ft.) in the suit property. It has come on record that the other members of Shelke family including Plaintiff's father have agreed to the arrangement of accepting built up area admeasuring 15000 sq.ft. at another site of Defendant No.1. Plaintiff would obviously be entitled his share in the said construction portion. Therefore, it is difficult to hold that any prima facie case exists for arriving at a conclusion that the transactions in favour of Defendant Nos.1 to 4 and consequently transactions in favour of Defendant No.5 & 6 are either void or are not binding on Plaintiff or other members of Shelke family.

8. One of the grievances sought to be raised by the Plaintiff is that the land at which the constructed area is sought to be provided to members of

Shelke family is affected by CRZ – I. Reliance in this regard is sought to be placed on letter dated 23 August 2022 issued by Thane Municipal Corporation stating that the land at Survey No.39, Village Kolshet is affected by CRZ-IA and CRZ-II. It is sought to be suggested that the site at which the constructed area is sought to be offered to Shelke family is at Survey No.39 Village Kolshet. Mr. Dewal, the learned counsel has submitted that the contention of the Plaintiff is entirely erroneous and the building at the said site has already been constructed up to plinth area. Therefore, it is difficult to hold that any believable case is made by Plaintiff that Defendant Nos.1 to 4 are not knowingly handing over any constructed area as agreed under the Agreement to Sale dated 16 July 2015.

9. Applying the test of irreparable loss and balance of convenience, the same are clearly in favour of Defendant Nos.5 & 6, who has started construction at the suit property owing to grant of development permission by Defendant No.15. In such circumstances Defendant Nos.5 & 6 cannot be enjoined from accepting bookings or selling flats or creating third party rights in the suit properties just for the purpose of deciding whether offer of constructed area admeasuring 15000 sq.ft. at another location by Defendant No.1 would fulfill its obligations under the Agreement to Sale. The balance of

convenience is thus clearly tilted against Plaintiff.

10. I am therefore of the view that the Trial Court has rightly refused injunction in favour of Plaintiff. Grant of temporary injunction is a matter of discretion. The Trial Court has rightly noticed that Plaintiff is the lone member of Shelke family, who is seeking to raise disputes about entitlements arising out of suit property which has already been sold. The Appeal is thus devoid merits is dismissed without any order as to costs.

11. In view of disposal of Appeal, Interim Application No. 13213 of 2023 stands disposed of.

(SANDEEP V. MARNE, J.)