

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.760 OF 2023
WITH
INTERIM APPLICATION NO.15318 OF 2023
IN
APPEAL FROM ORDER NO.760 OF 2023

Daulat Popatrao Kalate

....Appellant

Versus

Savitribai Dnyaneshwar Ghare & Ors.

....Respondents

...

Mr. Lakshyaved R. Odhekar, for Appellant/Applicant.

...

CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 20, 2023

P.C.:

1. Appellant has challenged order dated 11 April 2023 passed by 14th Joint Civil Judge Senior Division, Pune, rejecting Appellant/Plaintiff's application for temporary injunction to restrain the Defendants from creating third party rights in the suit property.

2. Plaintiff has instituted Special Civil Suit No.100 of 2023 for specific performance of the agreement to sale dated 9 September 2011. It appears that on 18 January 2022 the Defendant No.1 has sold the suit property in favour of Defendant Nos.2 and 3 who in turn further sold the suit property in favour of

Defendant Nos.4 and 5 on 16 March 2022. Therefore, Plaintiff has also sought relief of setting aside the sale deeds dated 18 January 2022 and 16 March 2022.

3 I have heard Mr. Odhekar, the learned Counsel appearing for the Appellant.

4 It appears that Defendant No.1 has executed registered agreement to sale dated 9 September 2011 in respect of the suit property. Plaintiff claims to have paid an amount of Rs.1,00,000/- in cash to Defendant No.1 at the time of execution of the agreement to sale. One of the conditions of the agreement to sale was to procure permission for sale of the property from the office of the Sub Divisional Officer under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 1999. Plaintiff further claims that though the agreement to sale did not handover possession of the suit property in Plaintiff's favour, a separate notarized possession receipt was executed by Defendant No.1 on 9 September 2011 by which possession of the suit property was handed over in favour of the Plaintiff.

5 It appears that after execution of the agreement to sale dated 9 September 2011, the Defendant No.1 did apply to the concerned authorities for issuance of permission for sale of the property. There is nothing on record to indicate that the Plaintiff made any correspondence with the Defendant No.1 for submission of applications for such permission. There is complete

silence on the part of the Plaintiff for 11 long years after execution of the agreement of sale. The first correspondence that Plaintiff made with Defendant No.1 was on 5 July 2022 when a notice was addressed to Defendant No.1 calling her upon to execute the sale deeds in view of the issuance of Government Resolution dated 11 February 2022 under which it was directed that such permission is no longer necessary. However, by the time the notice dated 7 July 2022 was issued, the two sale deeds dated 18 January 2022 by the Defendant No.1 in favour of Defendant Nos.2 and 3 and dated 16 March 2022 by Defendant Nos.2 and 3 in favour of Defendant Nos.4 and 5 were already executed.

6 The Trial Court has taken note of Plaintiff's conduct of remaining silent for a period of 11 long years in not making any effort for execution of sale deed in his favour. The documents on record do indicate that the Defendant No.1 made an application dated 16 March 2021 to the concerned authorities for grant of permission as such permission was granted immediately on 5 April 2021. However for 11 long years Plaintiff did not bother to verify whether the Defendant No.1 had made any such application nor made any correspondence with the Defendant No.1 in that regard.

7 Considering the conduct of the Plaintiff, it is difficult to say that any prima facie case was made out by the Plaintiff for grant of temporary injunction. Temporary Injunction being a discretionary relief, no fault can be found in the order of the Trial Court refusing temporary injunction in favour of the Appellant-Plaintiff.

8 There being no error in the order passed by the Trial Court, the present Appeal is devoid of merits. It is dismissed without any orders as to costs.

9 In view of the disposal of the Appeal, the Interim Application also disposed of accordingly.

(SANDEEP V. MARNE, J.)