

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6206 OF 2012

Mrs.Amina Mansoor Sayed ... Petitioner

Versus

M/s. Sun Shelter Realtor, through Partners,
Akbar Husain Sayed and Ors. ... Respondents

— —

Mr. Kiran Jain, for the Petitioner.

Mr. M.S. Kadu, for Respondent No.1.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 24, 2023.

P. C. :

1. The challenge in the petition is to the order dated 28th June, 2012 allowing the chamber summons filed by the respondent-plaintiff seeking to add the Petitioner as party defendant no.3 to the proceedings.

2. Heard Mr. Kiran Jain, learned counsel for the Petitioner and Mr. M.S. Kadu, learned counsel for Respondent No.1.

3. Learned counsel for the Petitioner submits that the plaintiff does not seek the relief of specific performance of the Memorandum of Understanding (MoU) and the relief is restricted

only as to the injunction. He would submit that the same is evident from the valuation which is at paragraph 12 at page no.25 of the petition and would submit that the plaintiff has valued suit only for the purpose of injunction. He would submit that considering the relief which was sought in the plaint, the Petitioner who is the subsequent transferee of the property is not required to be impleaded as party to the proceedings which only seeks injunction. He relies upon the Full Bench decision of this Court in the case of ***Nitin Gandhi and another Vs. Dinyar Pheroz Dubash and Others***, reported in ***2015 (2) Mh.L.J. 850***; and the decision of the Apex Court in the case of ***Ramesh Chandra Pattnaik Vs. Pushpendra Kumari and Others***, reported in ***(2008) 10 SCC 708***.

4. Considered the submissions.
5. S.C.Suit No.2093 of 2011 seeks the following reliefs:

“a) That this Hon. Court be pleased to declare that the defendants are bound & liable to the terms & conditions of this MOU dated 3/2/2010 & power of attorney dated 3/2/2010 & defendants have no right, title & interest to dispose of the suit property or create any third party right, title & interest of whatsoever nature of the said property or any part thereof.;

b) That the Defendants their servants agents servants or persons claiming through them be restrained by an order and permanent injunction from encumbering and/or creating any third party rights title or interest in respect of the suit premises being as per the Exhibit "A" hereto or any part thereof."

6. If the averments of the plaint are perused, it is the case of the plaintiff that a MoU dated 3rd February, 2010 was executed between the plaintiff and the defendants in respect of the immovable property which is described in the Schedule annexed to the plaint. It is stated that after execution of the MoU, the plaintiff started preliminary preparation for development of the suit property. As the obligation of the defendant under the MoU was not complied with the plaintiff through their advocate called upon the defendants to specifically perform their part of the MoU.

7. It is further the case of the plaintiff that the plaintiff came across public notice to the effect that the Petitioner herein intends to purchase the property described in the public notice to which objections were lodged by the Plaintiff. Armed with this case, the plaintiff seeks a declaration that the defendants are bound and liable to comply with the terms and conditions of the MoU and that the defendants have no right, title and interest to dispose of the

properties. The plaint also seeks perpetual injunction restraining the defendants from creating any third party rights in the property. Perusal of the averments in the plaint indicates that the case of the plaintiff that there is valid and subsisting of MoU which has been executed between the plaintiff and the defendants and upon learning about proposed sale to the Petitioner herein, the suit in question is filed. As such, the averments in the plaint clearly disclose that the suit is filed for the purpose of claiming specific performance of the MoU dated 3rd February, 2010 and Power of Attorney dated 3rd February, 2010. The reliance placed by the learned counsel for the Petitioner on the valuation clause is clearly misconceived. It is open for the Petitioner to file appropriate application pointing out deficiency in the court fees before the trial Court. The admitted position is that the Petitioner is a subsequent purchaser of the suit property, and being the subsequent purchaser for the effective adjudication of the controversy in dispute for specific performance of the MoU, the impleadment of the Petitioner as party cannot be faulted with. As far as the decision of the Full Bench of this Court is concerned, the said decision is not applicable for the reason that the Petitioner claims to be vendor of the plaintiffs. As regards the decision of the Apex Court, the same was in respect of a case where the suit was not filed for specific performance.

8. Considering the averments of the plaint in the present case that it is evident that the suit has been filed for specific performance of the MoU. The impugned order impleading the Petitioner as party to the proceedings does not suffer from any infirmity.

9. Writ Petition devoid of merits and stands dismissed.

10. Needless to clarify that it is open for the Petitioner to raise the issue as regards the maintainability of the suit before the Trial Court, which application, if filed, the Trial Court to consider the same on its own merits and in accordance with the law.

(Sharmila U. Deshmukh, J.)