

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

**APPEAL FROM ORDER NO.1003 OF 2022
WITH
INTERIM APPLICATION NO.19274 OF 2022**

Sneha Shankar Katariya and Others ...Appellants
vs.
Subhash Tipanna Nelge and Others ...Respondents

Dr. Abinav Chandrachud i/b. Mr. Pawan Patil, for the Appellants.
Mr. Siddharth Deshpande a/w. Mr. Jagdish Reddy, for the
Respondent No. 1.
Mr. Girish Godbole, Senior Advocate i/b. Mr. Shivraj Patne and Ms.
Deepashikha Godbole, for Respondent Nos. 32 to 69.

CORAM : N. J. JAMADAR, J.
DATE : JUNE 07, 2023

ORDER

1. This appeal is directed against an order on an application for temporary injunction (Exhibit 5) in Special Civil Suit No. 680 of 2022 passed by the learned Civil Judge, Senior Division, Pune on 13th October, 2022 whereby the application preferred by the appellants/ plaintiffs to restrain the defendant Nos. 32 to 68 from creating third party interest in the land bearing old Survey No. 790/2, village Charholi-Budruk, Gat No. 151/2 admeasuring 01H 87R situated at Wadmukhwadi, Tal. Haveli, Dist. Pune (the suit property) and changing the nature thereof came to be rejected.

2. For the sake of convenience and clarity the parties are hereinafter referred to in the capacity in which they are arrayed before the trial Court.

3. Shankar Premchand Kataria was the predecessor in title of the plaintiff Nos. 1 to 3, who claimed to have entered into an agreement to sale the suit property in favour of the plaintiff No. 4.

4. The plaintiffs assert on 3rd June, 1991 the defendant Nos. 5 to 15 executed a registered agreement in favour of defendant Nos. 1 to 4 to sale the properties including the suit property. On 20th January, 1994 the suit property came to be sold by defendant Nos. 1 to 18 to Shankar Kataria under a registered sale deed. Though the document was tendered for registration in the year 1994 itself, it was registered on 8th November, 2001. Late Shankar Kataria, had, in turn, agreed to sale the suit property in favour of plaintiff No. 4 on 14th July, 1994, and had also executed a Power of Attorney.

5. The plaintiffs assert that in the intervening period on 11th October, 1996, a purported Correction Deed came to be executed thereby professing to correct the Sale Deed dated 20th January, 1994 so as to remove the name of defendant No. 17 from the array of vendors. The said instrument, according to the plaintiffs, is null

and void, illegal and non-est in the eyes of law in the face of a registered Sale Deed dated 20th January, 1994.

6. Defendant No. 17 got her name mutated to the record of right of the suit property pursuant to an order passed in Revision Application No. 2 of 2019. Eventually, defendant No. 17 executed a Sale Deed on 10th September, 2001 purporting to sale 93.5 R land out of the suit property in favour of defendant No. 68, despite the fact that the entire suit property came to be sold to the predecessor in title of the plaintiffs under the sale deed dated 20th January, 1994.

7. The plaintiffs further averred that the defendant No. 25 professed to sale 56R land out of the said property in favour of defendant No. 67 under Sale Deed dated 11th September, 2001. According to plaintiff, the said Deed was also illegal and did not bind the plaintiffs. On the strength of the aforesaid Sale Deeds, there have been subsequent transfers of the portions of the suit property in favour of defendant Nos. 32 to 66. All those transfers are illegal and void.

8. The plaintiffs assert that the plaintiffs became aware of the aforesaid transactions when a notice was published in newspaper

on 29th April, 2021. Hence, after ascertaining the facts, the plaintiffs instituted the suit for declaration of ownership over the suit property and that the Correction Deeds and subsequent instruments in respect of the suit property are null and void, non-existent in the eyes of law and do not bind the plaintiffs and for consequential reliefs. In the suit, the plaintiffs took out an application for temporary injunction.

9. The application was resisted by the defendant Nos. 32 to 68. It was contended that defendant No. 17 had never conveyed her right, title and interest in the suit property and thus the plaintiffs claim of having acquired ownership over the defendant No. 17's interest, was unsustainable. Adverting to the time which had elapsed and subsequent developments, during the intervening period, the defendants contended that they would suffer irreparable loss in the event of grant of temporary injunction.

10. By the impugned order, the learned Civil Judge was persuaded to reject the application holding that there was material to indicate that the defendant No. 17 was not the vendor of the predecessor in title of the plaintiffs. Prima facie, the share of defendant No. 17 was not the subject matter of the Sale Deed dated

20th January, 1994. The facts that the said Sale Deed came to be registered in the year 2001 despite having been executed on 20th January, 1994 and considerable time had elapsed since the execution of the Sale Deed and the developments had occurred in the intervening period, including the execution of the multiple instruments, were also arrayed against the plaintiffs. Attributing prima facie knowledge to the plaintiffs, it was held that the conduct of the plaintiffs disentitled them from claiming equitable reliefs.

11. Being aggrieved the plaintiffs are in appeal.

12. I have heard Dr. Abinav Chandrachud, the learned counsel for the appellants, Mr. Siddharth Deshpande, learned counsel for respondent No. 1 and Mr. Girish Godbole, learned senior advocate for respondent Nos. 32 to 69.

13. Dr. Chandrachud, learned counsel for the appellants canvassed a multi-fold submission. First, learned Civil Judge was in error in holding that the defendant No. 17 was not one of the executants of the Sale Deed dated 20th January, 1994. Banking upon the Agreement for Sale dated 3rd June, 1991 Dr. Chandrachud would urge that defendant No. 17 was the attesting witness to the

said registered Agreement for Sale whereby the entire Survey No. 790/2 was agreed to be sold. Second, the learned Civil Judge could not have considered the aspect of delay in registration of the Sale Deed dated 20th January, 1994 as the Sale Deed was lodged for registration in the month of February, 1994 itself. Thirdly, according to Dr. Chandrachud, the learned Civil Judge lost sight of the fact that the plaintiffs had offered a plausible explanation about the delay in approaching the Court as they became aware of the fraudulent transactions only upon publication of a notice in the newspaper as a part of title search.

14. Dr. Chandrachud also made an endeavour to draw home the point that registered Sale Deed dated 20th January, 1994 could not have been corrected by executing an unilateral and unregistered Correction Deed dated 11th October, 1996. Laying emphasis on the fact that the predecessor in title of the plaintiffs was not the executant to the said Correction Deed, it was urged that the said Correction Deed had no bearing on the title of the plaintiffs to the suit land.

15. In opposition to this, Mr. Godbole, learned senior advocate for defendant Nos. 32 to 69 submitted that the fact that defendant No. 17, the predecessor in title of those defendants, was not the

executant of the Sale Deed dated 20th January, 1994 under which the plaintiffs claim, is established beyond the pale of controversy. Attention of the Court was invited to the Sale Deed dated 20th January, 1994 and the POA on the strength of which the Sale Deed came to be executed and the findings recorded by the Court in Regular Civil Suit No. 1175 of 2005 that defendant No. 17 was not one of the vendors. In the circumstances, according to Mr. Godbole, the learned Civil Judge committed no error in declining to grant temporary injunction and thus the exercise of discretion does not warrant any interference.

16. Before advertng to appreciate the submissions on behalf of the parties, it may be necessary to note that by an order dated 2nd March, 2023 this Court directed respondent No. 1 to produce before this Court, the original/certified copy of the POA referred to in the Sale Deed dated 20th January, 1994 executed between respondent No. 1 and the predecessor in title of the plaintiffs.

17. The respondent No.1 has sworn an affidavit. A copy of the Power of Attorney is annexed to the affidavit. Evidently, the defendant No.17 was not one of the executants of the Power of Attorney. The assertions in the affidavit of respondent No.1 have not been controverted. Thus, at this stage, the Court has to

proceed on the premise that the assertions in the affidavit of respondent No.1 remained uncontroverted.

18. First and foremost, the reliance sought to be placed on the Agreement for Sale dated 2nd June, 1991 to bolster up the title of the plaintiffs over the share of defendant No. 17 in the suit land, does not seem to be well founded. If the said instrument dated 2nd June, 1991 is read as a whole, prima facie, it was of executory nature. Substantial consideration was to be parted with and possession of the properties, agreed to be sold, was to be delivered at the time of execution of the Sale Deed. I am thus not persuaded to accede to the submission on behalf of the plaintiffs that the said instrument, partakes the character of conveyance.

19. In any event, defendant No. 17 was not one of the executants to the said instrument. At this stage, much mileage cannot be drawn from the fact that defendant No. 17 was one of the witness to the said instrument.

20. Secondly, though defendant No. 17 was shown as one of the executants to the Sale Deed dated 20th January, 1994, through the POA, yet, the weight of the material on record prima facie indicates that defendant No. 17 had not executed POA in favour of respondent

No. 1. Even if the Correction Deed is eschewed from the consideration on the premise that it is unregistered, there are other documents and circumstances which prima facie show that the defendant No. 17 was not one of the vendors. This factor, in a large measure, erodes the plaintiffs claim. The learned Civil Judge was justified in drawing a prima facie inference that the interest of defendant No. 17 did not pass under the Sale Deed dated 20th January, 1994.

21. The learned Judge also correctly appreciated the effect of time that has elapsed since the execution of the Sale Deed dated 20th January, 1994 and the aspect of delay in approaching the Court to seek injunctive reliefs. Often, with the passage of time, equities intervene and the third party rights accrue. Evidently, third party interests have been created. Ex facie, it would be difficult to accede to the submission on behalf of the plaintiffs that they became aware of the developments of the multiple instruments executed in respect of the suit property only upon publication of a notice in the newspaper. All these factors, including the conduct of the plaintiffs and aspect of delay inexorably bear upon the exercise of discretion to grant injunctive relief.

22. To conclude, the learned Civil Judge has kept in view the

principles which govern the grant of temporary injunction and correctly applied those principles to the facts of the case and justifiably exercised the discretion, which is not capable of correction in the exercise of limited appellate jurisdiction.

23. Resultantly, no interference is warranted in the impugned order. The appeal thus deserves to be dismissed.

Hence, the following order.

ORDER

- 1] The appeal stands dismissed.
- 2] In view of the dismissal of the appeal, the Interim Application also stands dismissed.
- 3] At this stage, Dr. Chandrachud, learned counsel for the appellants prayed for continuation of the ad-interim order.
- 4] In the light of the view which this Court is persuaded to take, especially in the backdrop of the nature of the plaintiffs claim, no case for continuation of ad-interim relief is made out. Hence, the oral application for continuation of ad-interim relief stands rejected.

(N. J. JAMADAR, J.)