



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.824 OF 2023

WITH

INTERIM APPLICATION NO.15981 OF 2023

Nakoda Constructions] ... Appellant/Applicant

Versus

Pinni Co-Operative Housing Society]
Limited & Ors.] ... Respondents

Mr. Atul Damle, Senior Advocate a/w *Mr. Abhay Dhadiwal i/b Jayakar & Partners* for Appellant / Applicant.

Mr. R. D. Soni a/w *Mr. V. R. Kasle i/b Ram & Co.* for Respondent No.1.

Mr. Surel Shah i/b *Mr. Siddharth Khandelwal & Mr. S. D. Gadgil* for Respondent No.2.

CORAM :- SANDEEP V. MARNE, J.

DATE :- 06 OCTOBER, 2023

P. C. :-

1. This Appeal challenges the Order dated 26/09/2023 passed by the Civil Judge Senior Division, Pune, rejecting Appellant/Plaintiff's application for grant of temporary injunction.

2. The Plaintiff has filed Special Civil Suit No.1276 of 2023 seeking a declaration that the decree passed in Regular Civil Suit No.980 of 2014 is binding on the Defendants, their agents, assignees, nominees, attorney holders etc. and/or anyone claiming through the Defendants. They have also challenged the Commencement Certificate dated 14/05/2019 issued by Pune Municipal Corporation in favour of

Defendant Nos.1 and 2 for carrying out development on the suit property. The Appellant/Plaintiff has secured decree dated 01/10/2016 in R.C.S. No.980 of 2014 against the original owner. In that litigation, the present Defendants were admittedly not impleaded. Considering the assertion of Plaintiff/Appellant about oral agreement executed in his favour as well as by taking into consideration all the relevant factors, the Trial Court has proceeded to reject his application for temporary injunction.

3. I have heard Mr. Atul Damle, learned Senior Advocate for the Appellant / Applicant, Mr. R. D. Soni, learned Counsel for Respondent No.1 and Mr. Surel Shah, learned Counsel for Respondent No.2.

4. After having considered submissions canvassed by the learned Counsels for parties, it is seen that the Appellant/Plaintiff is claiming right, title and interest in the suit property bearing Survey Nos.9 to 14 Hissa No.1/33 admeasuring 0.79R at at Village – Mundhwa, Taluka – Haveli, District – Pune on the strength of an oral agreement / oral contract executed by the original owner in his favour. Mr. Damle has placed on record copies of Agreement for Sale dated 19/03/1998 as well as copy of irrevocable Power of Attorney dated 19/03/1998 to counter the finding recorded by the Trial Court that the suit is based on oral agreement. However, perusal of the Plaint would show that far from relying on the so called 'Agreement for Sale dated 19/03/1998', the Plaintiff/Appellant pleaded in para 4 of the plaint as under:-

*“4. Plaintiff further states and submits that as per the terms and conditions of the said **oral agreement/oral contract**/writings/ understanding, the owners have put the plaintiff in vacant, actual and physical possession of the suit property and since then then Plaintiff is in actual and physical possession of the suit property.”*

Thus, there is a specific admission in the plaint that the transaction in question was 'oral'.

5. The Appellant/Plaintiff has relied upon decree dated 01/10/2016 in R.C.S. No.980 of 2014 to demonstrate that the suit properties are in his possession. However, suit decree has been passed on 01/10/2016, long after execution of registered Sale Deed dated 04/02/2005 in favour of Defendant No.1. However, Plaintiff chose not to implead Defendant No.1 as party to the said R.C.S. No.980 of 2014. The decree dated 01/10/2016 would therefore not bind the Defendants in Special Civil Suit No.1276 of 2023. Interestingly, the Appellant / Plaintiff has also did not challenge the registered Sale Deed executed in favour of Defendant No.1.

6. It is therefore difficult to hold that any *prima facie* case is made out by the Appellant/Plaintiff for grant of any temporary injunction. The Trial Court has rightly proceeded to reject the application for temporary injunction.

7. The Appeal being devoid of merits, is dismissed.

8. Needless to clarify that the observations made in this order are *prima facie* and shall not influence the mind of the Trial Court while deciding the suit finally.

9. In view of dismissal of Appeal, Interim Application does not survive and the same is also disposed of.

(SANDEEP V. MARNE, J.)