

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 240 OF 2023
WITH
INTERIM APPLICATION NO.3341 OF 2023

Gaurav Rajeshbhai Desai & Ors. ... Appellants

Versus

Yagyanarayan Mishra & Ors. ...Respondents

Mr. G. S. Godbole, Senior Advocate i/b. Mr. B. G. Thorat for Appellant.
Mr. P. S. Dani, Senior Advocate a/w. Mr. Rakesh Kumar, Mr. Akash Giri,
 Mr. Vikash Giri i/b. M/s. Legal Vision for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.
DATE : 06 SEPTEMBER 2023.

P. C.:

1. By this appeal, Appellants have challenged order dated 02 August 2022 passed by the Civil Judge Senior Division, Kalyan in Special Civil Suit No. 194 of 2017. By the impugned order, the Trial Court has proceeded to injunct Defendant Nos.1, 2, 3, 4, 6, 7, 8 and 9 from creating third party interests, from dispossessing Plaintiffs and from creating hurdles or disturbance in running of the schools and institutions by Plaintiffs in the suit property.

2. Plaintiffs have instituted Spl. C.S. No.194 of 2017 for specific performance of agreement dated 07 March 1994 containing clause of preemption. Plaintiffs claim to be in possession of the suit property on the basis of lease deeds dated 24 April 1968, 16 July 1971 and 07 March 1994. It is claimed by the Plaintiffs that under agreement dated 07 March 1994 Defendant Nos.1 to 5 have *inter alia* agreed to sell the suit property in favour of the Plaintiffs who have been running schools and institutions on the suit property for the last several years. Appellants are the subsequent purchasers of the suit property vide Deed of Conveyance dated 25 August 2014. Since the original owners failed to convey the suit property in favour of the Plaintiffs and since Defendant Nos.6 to 9 were attempting to disturb Plaintiffs' possession, Special Civil Suit No.194 of 2017 has been filed. The Trial Court has passed order of temporary injunction on 02 August 2022 restraining Defendant Nos.1 to 4 and 6 to 9 from creating third party rights, dispossessing Plaintiffs and creating hurdles in running schools and institutions in the suit property.

3. I have heard Mr. Godbole the learned advocate for Appellant and Mr. Dani the learned senior advocate appearing for Respondent No.1.

4. After considering the submissions canvassed by the learned senior advocates appearing for the rival parties, it is seen that Appellants do not dispute possession of Plaintiffs over suit property. In fact, Mr.

Godbole has submitted that the Appellants have adopted independent remedies for recovery of possession from Plaintiffs. In that view of the matter, direction No.3 in the operative portion of the order dated 02 August 2022 restraining Appellants from dispossessing Plaintiffs cannot be faulted.

5. So far as injunction that restrains Appellants from creating hurdles or disturbance in running schools or institutions is concerned, I again do not find any error in the said direction of the Trial Court. Plaintiffs have already been running school / institutions on the suit property for the last several years and since the Appellants are restrained from dispossessing Plaintiffs, they cannot create any hurdles or disturbance in running schools / institutions in the suit property.

6. So far as injunction restraining Appellants from creating third party interests in the suit property is concerned, Mr. Godbole has strong objection to the said direction. He would submit that Plaintiffs are mere lessee in the suit property and therefore in their capacity as a lessee, Plaintiffs cannot injunct the owner from creating third party rights in the suit property. I am however not impressed by this submission. Plaintiffs are not just lessee of the suit property but want to become owner thereof on the strength of agreement dated 07 March 1994. There has already been one transaction in Appellant's favour in the year 2014 which has led to filing of the present suit by the Plaintiffs. If Appellants are permitted to create further rights in the suit property, the same would

create complications where Plaintiffs would be required to implead subsequent purchasers to the suit and set up a challenge to their transactions. Appellants also appears to be in knowledge of execution of preemption agreement in favour of Plaintiffs. It is Appellants' case that suit property was offered to the Plaintiffs for purchase vide letter dated 20 January 2012 and after refusal by the Plaintiffs, the Appellants purchased the same. This assertion will have to be established before the Trial Court while prosecuting the suit. As of now, it was necessary to prevent further complications in the suit by restraining the Appellants from creating any third party rights in the suit property during pendency of the suit.

7. I accordingly do not find any error in the order dated 02 August 2022 passed by the Trial Court. Appeal, being devoid of merit, is dismissed without any order as to costs.

SANDEEP V. MARNE, J.

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