

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3359 OF 2021

IN

SUIT NO. 833 OF 2015

Faroukh Jehangi Karanjia & Ors.

...Applicants/
Plaintiffs

Versus

Shantilal Vaghji Shah & Ors.

...Defendants

Shariq Nachan a/w Ziyad Madon i/by Prabhakar M. Jadhav for the Plaintiff.

A.S. Khandeparkar a/w P. Sharma, N. Dedhia, Rushikesh Bhagat, Mr. Vaibhav Kulkarni, Mr. Rohit Mahdik, Mr. Saurabh Mittal, P. Sharma for the Respondent No. 6.

CORAM : R.I. CHAGLA J

DATE : 20 January 2023

ORDER :

1. By this Interim Application, the Applicants/original Plaintiffs have sought for a decree to be passed in the above Suit on admission of the facts mentioned in the Plaint by Defendant Nos. 1 to 5 and for decree to be passed in terms of prayer clauses (a) to (d) of the Plaint.

2. The Applicants/original Plaintiffs together with the Defendant No. 6, (erstwhile Plaintiff who was later transposed by order dated 1st February, 2018) executed the Agreement for Sale dated 23rd April 1984 (“**the said agreement**”) with Vaghji Nagpar Shah who agreed to sell the land and building situated at Bandra which is described in Exh.A of the Plaint. The Plaintiffs and Defendant No. 6 are siblings and children of Mrs. Mehbi Jehangir Karanjia.

3. In the year 2018, the Plaintiffs and Defendant Nos. 1 to 5 reached a settlement in the above Suit. The Consent Terms finalised and executed by the Plaintiffs and Defendant Nos. 1, 2, 4 and 5 remained to be executed by Defendant No. 3. Under Clause 8 of the Consent Terms, these Defendants agreed, declared and confirmed that the above Suit be decreed in terms of prayer clauses (a) to (d). It was in the light of this admission in the Consent Terms that the Plaintiff filed the present Interim Application seeking a decree on admission in terms of prayer clauses (a) to (d) of the Suit.

4. The Defendant Nos. 1 to 5 have been given several opportunities to file their Affidavit in Reply as can be seen from the

prior orders of this Court. Upon being given a last opportunity by this Court by order dated 18th October 2022, the Defendant No. 1 has for himself and for Defendant Nos. 2 to 5, being their Constituted Attorney, filed an Affidavit on 2nd December 2022. In the said Affidavit, the Defendant Nos. 2 to 5 have admitted that the Agreement for Sale dated 25th April 1984 has been executed between the Plaintiffs and Vaghji Nagpar Shah, the predecessor in title of the Defendants is valid, subsisting and binding upon the Defendants. The Plaintiffs have been put in full and absolute possession of the suit property pursuant to the said Agreement for Sale.

5. The Defendants who are legal survivors of the said Vaghji Nagpar Shah have thus admitted to a decree being passed in the Suit. They have admitted the facts in the Complaint and that the Plaintiff and Defendant No. 6 are entitled to decree on admission.

6. Apart from the admission on the part of the Defendant Nos. 1 to 5, it can be seen from the record that after signing the Consent Terms, Defendant Nos. 1 to 5 have executed and registered Irrevocable Power of Attorneys, containing specific references to the

Consent Terms and the settlement of dispute between the parties which are as under:-

- a. First such Power of Attorney dated 1st February 2018 by which Defendant Nos. 2, 4 and 5 acknowledged having individually approved the Consent Terms and *inter alia* appointed Defendant No.1 to execute/admit execution of the Consent Terms and the Deed of Conveyance on their behalf, as well as to appoint an attorney in his place with the same powers given to him. **(Ex. B of the IA @ page 71).**
- b. The second Power of Attorney is dated 3rd February 2018 from Defendant No. 3 in favour of Defendant No. 1 **(Ex. B of the IA @ 97).**
- c. Thus, Defendant Nos. 2 to 5 delegated to Defendant No. 1 the power to execute the Consent Terms and the Deed of Conveyance on their behalf and allowed further delegation of their powers to a third party. A perusal of both the above referred Power of Attorneys leaves no manner of doubt that the Defendant No. 1 to 5 had approved the Consent Terms and Defendant No. 1, 2, 4 & 5 have executed the same. As far as Defendant No.3 is concerned, a perusal of clauses (H) & (I) of the recital and clauses 2, 3, 5 and 6 of the operative portion of the Power of Attorney dated 3rd February 2018 from Defendant No. 3 in favour of

Defendant No. 1 confirms that although Defendant No. 3 was unable to sign the Consent Terms, he had fully accepted its terms and the factum of the settlement of the above Suit.

- d. Thereafter, Defendant No. 1, by exercising his power of delegation as per clause 12 of both the above referred irrevocable Power of Attorneys, executed and registered a Power of Attorney dated 6th February, 2018 in favour of Plaintiff No. 2, 3 and 5 which contain identical recitals qua the settlement of the above suit and approval of the Consent Terms. All the 3 Power of Attorneys were executed and registered within a span of 6 days.

7. The Consent Terms and the Power of Attorneys specifically record that the entirety of the consideration of Rs. 95,000/- for purchase of the suit property was received by the vendors in the year 1984 and that possession of the suit property has been handed over to the purchasers i.e. Plaintiffs and Defendant No. 6. However, in view of Defendant Nos. 1 to 5, who are not ordinary residents of India having failed to appear before this Court and the Consent Terms remained to be taken on record as well their having failed to execute and register the Deed of Conveyance, they have executed the Power of Attorneys in favour of Defendant No. 1

confirming the settlement and empowering him to complete those formalities. The Plaintiffs have also paid the entire stamp duty for registration of the Conveyance Deed.

8. The Plaintiffs had in the month of July 2021 sent a fresh Deed of Conveyance of the Suit property to the Defendant Nos. 2, 3 and 5, who are residing in Australia. These Defendants have executed the Conveyance Deed before the Notary Public in Australia and sent the documents back to the Plaintiffs confirming the intention of the Defendants to abide by the Consent Terms and the Suit be decreed in terms of prayer clauses (a) to (d) as provided in the Consent Terms.

9. Accordingly, considering the clear admission of the Defendant Nos. 1 to 5 in the documents on record which have been annexed to the Plaint as well as the Affidavit of the Defendant Nos. 1 to 5 in Reply to the Interim Application, the Suit is decreed in terms of prayer clauses (a) to (d), except for (d)(v) as under :-

*(a) that this Hon'ble Court be pleased to Order and
Declare that there exists a valid, subsisting and
binding Agreement for Sale dated 23rd April 1984*

between the Defendant Nos. 1 to 5 and the Plaintiffs and Defendant No. 6 with respect to the suit property, more particularly described in the schedule being Exhibit "A" hereto;

(b) that this Hon'ble Court be pleased to Order and Declare that the Plaintiffs and Defendant. No. 6 are the absolute owners of the suit property as more particularly described in Exhibit "A" hereto;

(c) that this Hon'ble Court be pleased to order and decree the Defendants to jointly and severally to specifically perform their obligations to execute a Deed of Conveyance (being Exhibit "N" hereto) in respect of the suit property being All that piece or parcel of land situate lying and being at Danda in the Registration Sub-District of Bandra District Bombay Suburban nor Greater Bombay bearing Plot No. 650 of S.S. VII of Khar, C.T.S. No. 3 containing by admeasurement 618.33 square yards i.e. 516.924 square metres or thereabouts together with the Building thereon and bounded as follows:- that

is to say, on or towards the North by Plot No. 649 of S.S. VII of Khar, on or towards the South by Plot No. 651 of S.S. VII, on or towards the East by Plot No. 644 of S.S. VII Khar and on or towards the West by Khar Road No. 20 and which said premises are assessed by the Mumbai Municipal Corporation under 'K' Ward No. 1764 of Khar Road No. 20 and more particularly described in the Schedule marked as Exhibit - "A" hereto and to register the Deed of Conveyance (being Exhibit "N" hereto) in accordance with law within such time as this Hon'ble Court deems fit and proper;

- (d) In the event of the Defendants failed to execute a Deed of Conveyance (being Exhibit "N" hereto) in favour of the Plaintiffs and Defendant No. 6 in terms of prayer clause (c) hereinabove, this Hon'ble Court be pleased to appoint the Prothonotary and Senior Master, High Court, Bombay to execute the Deed of Conveyance (being Exhibit "N" hereto) in respect of the suit property more particularly described in Exhibit 'A' hereto and to attend the*

Office of the Sub-Registrar of Assurances at Mumbai or such other places and to do admit execution and registration thereof, before the office of Sub-Registrar of Assurances at Mumbai for and or such other places on behalf of the Defendants;

(d)(i) This Hon'ble Court be pleased to order and decree the Defendant No. 1 to 5 to jointly and severally pay to the Plaintiffs the sum of Rs. 27,09,500/- (Rupees Twenty Seven Lakhs Nine Thousand and Five Hundred Only), with interest @18% per annum from 17th March 2021 till the date of realisation of the sum by the plaintiffs.

(d) (ii) This Hon'ble Court be pleased to order and decree the Defendant No. 1 to 5 to jointly and severally pay to the Plaintiffs the sum of Rs. 40,64,250 /- (Rupees Forty Lakhs Sixty Four Thousand Two Hundred and Fifty Only) as compensation towards the additional 3% stamp duty amount that the Plaintiffs are liable to pay due to the delay by Defendants No. 1 to 5 in not presenting themselves

for execution of the necessary documents;

(d)(iii) This Hon'ble Court be pleased to order and decree the Defendant No. 1 to 5 to pay to the Plaintiffs the sum of Rs. 3,00,000/(Rupees Three Lakhs Only), being the amount payable by the Plaintiff towards penalty;

(d)(iv) This Hon'ble Court be pleased to order and decree the Defendant No. 1 to 5 to pay to the Plaintiffs the sum of Rs.2,35,000/(Rupees. Two Lakhs Thirty Five Thousand Only), being the amount paid towards legal and other expenses with interest @ 18% per annum from 31st August, 2021 till the date of realisation of the sum by the Plaintiffs.

10. The Advocates for the Applicants / Original Plaintiffs seek leave to withdraw the Suit against Defendant No.7.

11. Leave is granted. The Suit is withdrawn against Defendant No.7.

12. The Advocate for the Plaintiffs shall carry out the amendments in prayer clauses (a) to (d) in the Plaint forthwith by

including Defendant No. 6 with the Plaintiffs in these prayers.

13. Re-verification is dispensed with.

14. Drawn up decree/ order is dispensed with unless the parties seek drawn up decree/ order, in which case they are entitled to apply.

15. Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]