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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 511 OF 2024
WITH
INTERIM APPLICATION NO. 11670 OF 2024
AND
SECOND APPEAL NO. 513 OF 2024
WITH
INTERIM APPLICATION NO. 11682 OF 2024

Nilofar Mahbub Mujawar ... Appellant/Applicant
Vs.

M/s. Konark Builders and Developers ... Respondents
and others

Mr. S. G. Deshmukh a/w. Mr. Samir Kumbhakoni for the
Appellant/Applicant.

Mr. Ganesh Misal (through VC) a/w. Mr. Rohit Chavan for the
Respondents.

CORAM : GAURI GODSE, J.

DATE : 8th OCTOBER 2024

ORDER :

1. Heard. Second Appeals are admitted on the following substantial
questions of law :

(i) Whether the plaintiff was entitled to file a suit for

cancellation of the sale deed executed by the plaintiff as power of attorney holder of the original owners ?

(ii) Whether the suit for cancellation of sale deed in favour of the defendant could have been decreed at the behest of the plaintiff who filed a suit in an independent capacity and not on behalf of the original owner ?

(iii) Whether the suit for cancellation of the sale deed could have been decreed on the ground of breach of condition of the sale deed ?

(iv) Whether the breach of condition of the sale deed as pleaded by the plaintiff could have been accepted by ignoring the provision of Section 32 of the Transfer of Property Act, 1882 ?

(v) Whether in view of Section 32 of the Transfer of Property Act, 1882 non-compliance of the clause as pleaded by the plaintiff can be termed as 'invalid' clause ?

(vi) Whether the statement produced on record before the First Appellate Court at Exhibit 30 can be accepted?

(vii) In view of order allowing application at Exhibit-13, whether the chart produced by the defendant can be accepted as sufficient evidence to support her contention that the entire consideration amount was paid and there was no amount due to be paid by the defendant in view of the sale deed at Exhibit 64 ?

2. Learned counsel for the respondents waives notice.
3. Call for record and proceedings.
4. Printing is dispensed with.
5. Learned Advocate for the appellants shall file private paper book within one year from today.

Interim Application No.11682 of 2024 in Second Appeal No. 513 of 2024 and

Interim Application No. 11670 of 2024 in Second Appeal No. 511 of 2024

6. These applications are for stay to the execution and operation of the impugned decree. Learned counsel for the appellant submits that since the Second Appeal is admitted, the execution of the impugned decree is required to be stayed.

7. He submits that the plaintiff has already developed the suit property. He thus submits that in view of the subsequent development if the impugned decree is not stayed, serious prejudice would be caused to the appellant's right created in his favour pursuant to the sale deed which is subject matter of the suit.

8. Learned counsel for the respondents submits that the appellant has not come to this court with clean hands and has suppressed material facts which were brought on record before the trial court. He relies upon certain admissions given by the plaintiff in her oral evidence with regard to her knowledge regarding the claim of railways. He thus submits that the interim application be rejected. He further submits that the appellant has also violated clause (8) of the sale deed which is subject matter of the challenge in the suit. He thus submits that the appellant is not entitled to any interim relief.

9. Second Appeal is admitted on the question of law regarding the plaintiff's entitlement to seek cancellation of the sale deed and other grounds as formulated in the order admitting the Second Appeal. Admittedly the plaintiff is not owner of the suit property and the sale deed executed in favour of the appellant was as power of attorney

holder of the original owners. The suit is not filed on behalf of the original owners, however filed in an independent capacity by the plaintiff. The impugned decree cancels registered sale deed by original owners in favour of the appellant. The decree further directs the appellant to handover possession of the suit property to the plaintiff.

10. The grounds argued on behalf of the respondents are on merits of the Second Appeal which will be decided at the hearing of the Second Appeal. The said grounds cannot be considered at this stage for not granting interim relief.

11. Hence, during the pendency of the Second Appeal, there will be interim relief in terms of prayer clause (b) of both the interim applications.

12. Interim Applications are allowed in the above terms.

[GAURI GODSE, J.]