

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 143 OF 2021

**ALONGWITH
INTERIM APPLICATION NO. 17252 OF 2022
ALONGWITH
CIVIL APPLICATION NO. 261 OF 2019
IN
SECOND APPEAL NO. 143 OF 2021**

Mr. Mahesh R. Sharma

..Appellant

V/s.

Terrance Joseph Gudioho & Ors.

..Respondents

Mr. Atul Damle, Senior Advocate a./w. Mr. Dharam Sharma
i/by. Dharam & Co. *for the Appellant.*

Mr. A.J. Almeida, *for Respondent Nos.1 and 2.*

CORAM : SANDEEP V. MARNE, J.

Dated : 29 January 2024.

P.C. :

1. The challenge in the present Appeal is to the Judgment and Order dated 15 June 2018 passed by the District Judge-2, Thane dismissing Regular Civil Appeal No. 68 of 2016 and reversing the Order

dated 1 August 2012 passed by the Executing Court. By order dated 1 August 2012, the Executing Court had partly allowed the application at Exhibit-45 filed by the Obstructionist/Appellant and held that the decree passed in Special Civil Suit No. 1337/96 is not executable to the extent of properties mentioned by the Obstructionist in his application.

2. I have heard Mr. Damle learned Senior Advocate appearing for the Appellant and Mr. Almeida learned counsel appearing for Respondent Nos.1 and 2.

3. After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that Respondent Nos.1 and 2 had instituted Special Civil Suit No.1337 of 1996 seeking specific performance of the Agreement for Sale dated 29 June 1982 in respect of Suit Galas Nos. B-4 and B-5 admeasuring area of 1000 sq.ft. in Laxmi Narayan Industrial Estate. The Suit was decreed on 31 August 2000 directing the Defendant No.1 to execute Sale-Deed in favour of the Plaintiffs in respect of the Suit Galas. It appears that the execution proceedings were opposed by the Judgment Debtors before the Executing Court by taking a defence, *inter-alia*, that the suit property is a non-existent property. The said defence was however rejected and the execution proceedings progressed further. In those execution proceedings, decree holders filed application after noticing obstruction by Appellant for his removal from Suit Galas. Similarly, Appellant also filed Obstructionist Application at Exhibit-45 seeking a declaration that the decree is not executable and for dismissal of the

execution proceedings. The application of the Appellant was premised on alleged purchase of Gala No. 4 admeasuring 755 sq.ft and Gala No. 5 admeasuring 805 sq.ft. It was the case of the Appellant that the two galas purchased by him are entirely different than the ones in respect of which decree is passed in Special Civil Suit No. 1337/1996. The Executing Court accepted the contention of the Appellant and held that the Decree passed in Special Civil Suit No.1337 of 1996 is not executable to the extent of the properties of the Obstructionist. The First Appellate Court has however reversed the finding of the Executing Court and has held that the Decree passed in Special Civil Suit No. 1337 of 1996 is in respect of the very same galas which are claimed to have been purchased by the Appellant/Obstructionist.

4. Though the Trial Court held that the description of the properties covered by Plaintiff's Agreement dated 29 June 1982 and the one covered by the Agreements dated 31 May 2006 executed in favour of the Appellant is different, the first Appellate Court has reversed the said finding by holding that the description of the property in both the Agreements is "*Survey No.50, Hissa No.4(Part) admeasuring 1193.8 sq.mtrs*". The only difference is non-mentioning of Village-Goddev in the Agreement dated 29 June 1982. So far as the difference in the numbers assigned to the Galas is concerned, it appears that in Plaintiff's Agreement dated 29 June 1982, the Galas were numbered as B-4 and B-5 whereas in the Agreements executed with the Appellant, the same are numbered as Gala Nos.4 and 5. Similarly, the area of galas in both the sets of agreement is also different. In my view, since the

vendor of the Appellant has attempted to create rights in respect of the property covered by the Decree dated 31 August 2000, the description of Galas is deliberately indicated differently than the one indicated in the Agreement dated 29 June 1982. Though the area of Gala Nos.4 and 5 allegedly sold to the Appellant is indicated as 755 sq.ft and 805 sq.ft in the Agreements dated 31 May 2006, the said area is indicated as 'super built-up area'. The super builtup area of 755 sq.ft and 805 sq.ft would roughly match with the area of 500 sq. ft each of two Galas agreed to be sold to Plaintiff. In my view, therefore the description of the galas was deliberately shown differently than the one reflected in the Agreement dated 29 June 1982 for the sole purpose of defeating the Decree passed in Special Civil Suit No. 1337 of 1996.

5. The first Appellate Court has also taken note of the fact that out of the total consideration of Rs.7,05,000/- shown for purchase of Gala No. 4, amount of only Rs.5,000/- was paid on the date of execution of the agreement and that no evidence was produced before the Executing Court to demonstrate payment of balance amount of consideration.

6. Considering the overall circumstances of the case, the first Appellate Court has rightly arrived at the conclusion that the Agreements are subsequently executed in favour of the Appellants/Obstructionist solely for the purpose of defeating the decree passed in Special Civil Suit No. 1337 of 1996. No substantial question of law is involved in the Appeal. The Appeal is accordingly

rejected. Interim Application and Civil Application taken out therein also do not survive. The same also stand disposed of.

SANDEEP V. MARNE, J.

7. After the order is dictated, the learned counsel appearing for the Appellant would request for continuation of the order dated 6 September 2022 passed by this Court, by which further execution of the Decree was stayed till the next date of hearing. The request is opposed by the learned counsel appearing for Respondent Nos.1 and 2. Considering the fact that the sale transaction shown in the name of the Appellant is solely for the purpose of frustrating the Decree passed in Special Civil Suit No. 1337 of 1996, which was decreed almost 24 years ago on 31 August 2000, I am of the view that the execution of the Decree cannot be delayed any further. Accordingly, the request for continuation of stay order is rejected.

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SANDEEP V. MARNE, J.