

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 631 OF 2023
WITH
INTERIM APPLICATION NO. 17104 OF 2023
IN
SECOND APPEAL NO. 631 OF 2023

Qbal Hajiali Dhanani (Deceased) }
Through Legal Heirs & Ors. } ... Appellants

Versus

Ratan Jehangir Cooper } .. Respondent

...

Mr. Rajiv Patil, Senior Advocate a/w Mr. Ojas Kocharekar for the Appellants.

Mr. Rajesh P. Khobragade for Respondent.

...

CORAM : SANDEEP V. MARNE J.

DATE : 29 JANUARY, 2024.

P.C.:-

1) This Appeal is filed by the Appellants challenging the Judgment and Decree dated 31 March 2023 passed by District Judge-2, Palghar in Regular Civil Appeal No. 67 of 2016, by which the first Appellate Court has reversed the Decree passed by Civil Judge, Senior Division, Palghar on 20 December 2011 in Special Civil Suit No. 40 of 2008 and has dismissed the Suit.

2) Briefly stated, facts of the case are that agricultural lands bearing Survey Nos. 11/7, 49/1, 51, 52, 55/6 at village Pasthal, Taluka Palghar, District Thane, were cultivated by one Ratanshaw Cooper as a tenant under Lease Deed dated 16 May 1954, which was executed in the name of his wife Smt. Meharabai and her son Jahangeer. Meharabai executed Power of Attorney dated 21 February 1980 in favour of her son Jahangeer. It is Plaintiff's case that Jahangeer Ratanshaw Cooper executed Sale Deed dated 25 September 1989 for himself and as Power of Attorney holder of his mother Meharabai in favour of Shri. Pradeep Bhikaji Save and Shri. Sanjay Narayan Churi after obtaining permission under provisions of Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 **(the Tenancy Act)**.

3) Meharabai died on 23 January 1996. It is Plaintiff's case that after death of Meharabai, disputes arose between Jahangeer on one side, and his three brothers and one Sister on the other, wherein Jahangeer's siblings claimed shares in the land on the premise that the lease was held on behalf of the joint family. On 20 November 1999, purchasers- Pradeep Bhikaji Save and Sanjay Narayan Churi executed Power of Attorney in favour of the Plaintiff in respect of lands purchased by them vide Sale Deed dated 25 September 1989. Memorandum of Understanding was executed on 13 December 1999 between Plaintiff, Pradeep Save, Sanjay Churi and

Jahangeer under which, Plaintiffs agreed to purchase the land and pay to Jahangeer the balance consideration set forth in the Conveyance dated 25 September 1989. It appears that out of agreed consideration of Rs.35,00,000/-, Jahangeer was paid only Rs. 5,00,000/- at the time of execution of Sale Deed dated 25 September 1989. Plaintiff therefore paid Rs.3,50,000/- to Jahangeer at the time of execution of MOU and balance amount of Rs.26,50,000/- was to be paid within 12 months of withdrawal and settlement of all disputes and litigations between Jahangeer and his family members. Jahangeer also executed General Power of Attorney in favour of Plaintiff on 13 December 1999.

4) It is Plaintiff's case that at the time of execution of the MOU, Jahangeer owned 50% share in the land, whereas the balance of 50% belonged to his mother Meharabai. Jahangeer died on 11 February 2008. Defendant is Jahangeer's son as his only legal heir.

5) In the above background, Plaintiffs instituted Special Civil Suit No. 40 of 2008 before Civil Judge, Senior Division, Palghar seeking injunction against the Defendant from committing breach of MOU and to transfer his undivided share as heir of Jahangeer in the suit property as per the MOU by accepting balance amount of consideration. It was also prayed that if the share of Jahangeer and his three brothers was held to be equal in

pending litigation, MOU be specifically performed to the extent of Jahangeer's share.

6) The Trial Court held that execution of the MOU and payment of amount to Jahangeer was proved, however the Trial Court held the suit for specific performance of MOU to be premature on the ground that the litigation between Jahangeer and his brothers was yet to be settled. On that count, the Trial Court did not grant prayer for specific performance. However, the Trial Court proceeded to partly decree the suit injunctioning the Defendant perpetually from creating third party interests in the suit property except by due process of law. The Trial Court granted the said relief on the ground that till settlement of disputes between Jahangeer and his family members and till specific performance of MOU, the suit property deserved to be protected.

7) Both Plaintiffs and Defendant were aggrieved by the Trial Court's decree dated 20 December 2011. Plaintiff filed first Appeal No.1594 of 2012 in this Court. Whereas Defendant filed first Appeal No.1052 of 2012 in this Court. Both the Appeals came to be transferred to the District Court, Palghar on account of amendment in pecuniary jurisdiction by Order dated 12 October 2015. Defendant's Appeal was numbered as Regular Civil Appeal No. 67 of 2016 and Plaintiff's Appeal was treated as cross objection in Regular Civil Appeal No. 67 of 2016. The first

Appellate Court decided the Appeal and the Cross Objection by common Judgment and Order dated 31 March 2023. Defendant's Appeal bearing Regular Civil Appeal No. 67 of 2016 has been allowed by setting aside the decree of permanent injunction granted by the Trial Court and accordingly Special Civil Suit No. 40 of 2008 filed by the Plaintiff has been dismissed. The cross objection filed by Plaintiff has also been dismissed. Legal heirs of Plaintiff are aggrieved by the Judgment and Order dated 31 March 2023 and have filed the present Second Appeal.

8) I have heard Mr. Patil, the learned Senior Advocate appearing for the Appellants and Mr. Khobragade the learned counsel appearing for Respondents.

9) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that Plaintiff's suit was for specific performance of the MOU dated 13 December 1999, by which he agreed to purchase the suit property from Shri. Pradeep Save and Shri. Sanjay Churi and to which Jahangeer Ratanshaw Cooper was also a signatory. The MOU was premised on previous transaction executed by Jahangeer in favour of Pradeep Save and Sanjay Churi on 25 September 1989. It was Plaintiff's case that Jahangeer executed Conveyance dated 25 September 1989 in favor of Pradeep Save and Sanjay Churi acting for himself as well as Power of

Attorney holder of his mother Meharabai. According to the Plaintiffs, Jahangeer and Meharabai each had 50% share in the suit property. It appears that, under the Deed of Conveyance dated 25 September 1989 Pradeep Save and Sanjay Churi were supposed to pay consideration of Rs.35,00,000/- to Jahangeer and only Rs.5,00,000/- was paid and Rs.30,00,000/- remained to be paid. Under the MOU, Plaintiff paid Rs.3,50,000/- to Jahangeer and agreed to settle the disputes between Jahangeer and his family members relating to the suit property. The sale transaction was to be executed after settlement of disputes by paying balance amount of Rs.26,50,000/- to Jahangeer.

10) This is how MOU dated 25 September 1989 was based on presumption that Pradeep Save and Sanjay Churi had become owners of the suit property and were in a position to convey the same in favour of Plaintiffs. Jahangeer was added as a party to MOU possibly because the entire amount of consideration was not paid to Jahangeer at the time of execution of Agreement to Sale on 25 September 1989.

11) However, certain developments took place at the front of tenancy authorities. As observed above, Ratanshaw had got the suit property entered in the name of Meharabai and Jahangeer as tenants and accordingly 32G proceedings were conducted thereby making Jahangeer and Meharabai

as tenant-purchasers vide Order dated 17 March 1988. The other children of Meharabai got aggrieved by 32G proceedings and challenged the same by filing TNC Appeal Nos. 15/89 and 16/89 before Sub-Divisional Officer, Dahanu contending that they also hold share in the suit property. During pendency of proceedings before , Jahangeer applied for permission under Section 43 of the Tenancy Act for effecting sale of suit property in favour of Pradeep Save and Sanjay Churi. Such permission was granted by SDO on 11 July 1989. Appeals preferred Jahangeer's brother and sister by were dismissed by SDO on 25 January 1996. They preferred Revisions before Maharashtra Revenue Tribunal (MRT). Simultaneously, the permissions granted by SDO on 11 July 1989 for sale of property was also challenged by them before MRT. MRT passed two orders on 14 January 1997. The Revisions challenging 32G proceedings were allowed and 32G proceedings were remanded to Agricultural Lands Tribunal (ALT) to decide the same afresh. By separate order passed on the same day, MRT set aside the sale permission granted by SDO on account of remand of 32G proceedings.

12) However, based on the permission dated 11 July 1989 sale deed dated 4 October 1989 was executed in favour of Pradeep Save and Sanjay Churi by Jahangeer. Since the permission was subsequently set aside by MRT, the sale executed in favour of Pradeep Save and Sanjay Churi was rendered void. As observed above Pradeep Save and Sanjay Churi executed MOU in

favour of Plaintiff on 13 December 1999, after their sale transaction became void vide MRT's order dated 14 January 1997. The other family members of Jahangeer filed Application under Section 84 of the Tenancy Act before SDO and sought declaration that the sale transaction vide conveyance dated 4 October 1989 as well as Plaintiff's MOU were unauthorized. SDO passed Order dated 30 September 2002 holding the transfers as illegal and directing eviction of Pradeep Save, Sanjay Churi and Plaintiff. The said order of SDO came to be upheld by MRT by Order dated 31 March 2009. This is how the transfer dated 25 September 1989 executed by Jahangeer in favour of Pradeep Save and Sanjay Churi was declared void and consequently MOU dated 13 December 1999 executed in favour of Plaintiff became incapable of being specifically performed. The Trial Court in my view erred in holding that MOU was capable of being specifically performed upon settlement of disputes amongst family members of Jahangeer. The Trial Court ought to have dismissed the suit of Plaintiff but erroneously granted relief of injunction restraining Defendant from creating third party rights for indefinitely till settlement of disputes between family members of Jahangeer. The first Appellate Court has rightly corrected the error committed by Trial Court.

13) Even otherwise, various covenants of the MOU are couched in such a manner that the same is impossible being specifically performed. The

other family members of Jahangeer are in serious litigations about their shares in the suit property. MOU executed in favour of Plaintiff hinges on legality of sale deed executed in favour of Pradeep Save and Sanjay Churi in the year 1989. The permission granted under Section 43 of the Tenancy Act for execution of that sale has been set aside and the transfer is declared illegal. In that view of the matter, no possible right accrued in favour of Plaintiff to seek specific performance of the MOU.

14) Mr. Patil has strenuously contended that even if the entire suit property cannot be transferred in favour of Plaintiff, at least Jahangeer's share (either 50% or in any case his equal share along with his brothers and sister, depending on result of their litigation) must be transferred in the name of Plaintiff towards of specific performance of the MOU dated 13 December 1999. Though the submission may appear to be attractive in the first blush, the same cannot be accepted as the same again faces the same hurdle of imperfect title of Pradeep Save and Sanjay Churi on account of declaration of sale deed executed in their favour to be void. Also, even if MOU is treated as a standalone agreement with Jahangeer and not dependent on title of Pradeep Save and Sanjay Churi, the same is impossible of being specifically performed as it is contingent on declaration of share of Jahangeer in pending litigations with his siblings. The suit was for specific performance and on account of existence of several hurdles, the agreement is

rendered incapable of being specifically performed. Therefore, the prayer for transfer of Jahangeer's share in the name of the Plaintiff cannot be entertained.

15) The first Appellate Court has held that Plaintiff is an experienced player in the matter of purchase of properties and that he took a calculated risks of execution of MOU dated 19 November 1999 after the 32G proceedings in favour of Jahangeer and Meharabai were remanded to ALT and sale permission under Section 43 of Tenancy Act were set aside by MRT on 14 January 1997. Plaintiff thus entered into MOU with Pradeep Save and Sanjay Churi and Jahangeer with full knowledge of MRT's decisions dated 14 January 1997. He must take the responsibility of the risk that he took.

16) After considering the overall conspectus of the case, I do not find any serious error being committed by the first Appellate Court in dismissing Plaintiff's suit. No substantial question of law is involved in the Appeal. The Appeal is accordingly rejected.

17) In view of the disposal of the Second Appeal, Interim Application No.17104 of 2023 do not survive and the same are also disposed of.

[SANDEEP V. MARNE J.]