



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL AGAINST ORDER NO.22 OF 2024

APPELLANTS

(Ori. Defendants)
(On R.A.)

- : 1 **Abdul Akash Jamal Abdul Jamil,**
Aged about : 35 Years, Occu: Business,
R/o. Saudagarpura, Amravati, Tq. &
Dist. Amravati.
- 2 **Rajendra S/o. Janrao Adhau,**
Aged about 60 Years, Occu. Business,
R/o. Chandur Bazar, Tq. Chandur
Bazar, Dist. Amravati.

..VERSUS..

RESPONDENTS

(Ori. Plaintiffs)
(On R.A.)

- : 1 **Gowardhandas S/o. Kashiram Rathi,**
Age : 76 Years, Occu.: Agriculturist,
- 2 **Smt. Sheetal W/o. Gowardhandas**
Rathi,
Age: 69 Years, Occu.: Agriculturist,
- 3 **Ashish Kumar S/o. Gowardhandas**
Rathi,
Age: 48 Years, Occu.: Agriculturist,
- 4 **Smt. Rachna W/o. Ashishkumar Rathi,**
Age : 46 Years, Occu.: Agriculturist,

All Respondent Nos.1 to 4 are resident
of Krishna Villa Infront of Government
I.T.I. College behind Kalim Petrol
Pump, camp, Amravati, Dist. Amravati.

Mr H. Biherani, Advocate for Appellants.

Mr P. R. Agrawal, Advocate for Respondent Nos.1 to 4.

CORAM : M. W. CHANDWANI, J.

DATED : 17th OCTOBER, 2024.

ORAL JUDGMENT

1. Correctness of the order dated 28.08.2024 passed by the Joint Civil Judge Senior Division, Achalpur, thereby allowing the application of the respondents – original plaintiffs restraining the appellants – original defendants from obstructing the possession of the plaintiffs over the suit property and from entering into the suit property till the decision of the suit.

2. The genesis of the dispute lies in agreement to sell dated 26.04.2023, whereby, the respondents – the owners of the suit property agreed to sell the suit property to the appellants on the terms and conditions mentioned in the said agreement. Since a dispute arose between the parties about non-payment of part consideration in time as agreed in the agreement to sell, it is necessary to mention here the terms of payment of consideration mentioned in the agreement to sell,

which are as under :

“i) The total sale consideration of the suit property is fixed as Rs.3,89,25,600/-.

ii) At the time of execution of the said agreement, amount of Rs.90,00,000/- to be paid to plaintiffs and they received the same by way of cheques and cash.

iii) Installment of Rs.90,00,000/- shall be paid on 15/07/2023.

iv) By paying the remaining sale consideration, sale-deed of the suit property shall be executed till 15/12/2023.

v) The major terms of the said agreement are to pay the installment of Rs.90,00,000/- on 15/07/2023 and if the amount of installment is not paid on the above date and also the sale deed was not executed on the fixed date i.e. 15/12/2023, then agreement to sell shall comes to an end. Further, the amount paid at the time of execution of the said agreement, forfeited and agreement stood canceled.

vi) Plaintiffs will permit/permission to fix board, demarcation, earth work, road and drainage development work and the possession of the suit property shall be delivered on execution of the sale deed of the suit property.”

3. The grievance of the respondents/sellers was that, the appellants failed to pay the second installment of Rs.90 lakhs to them till date, which they ought to have paid to the respondents by 15.07.2023. The respondents met the appellants on 14.09.2023 regarding payment of the second installment. However, the appellants instead of paying the second installment, gave threats to the respondents of creating third party interest in the suit property. Thereafter, on 20.09.2023, the respondents issued a legal notice to the appellants to pay the second installment as agreed in the agreement within seven days from the date of receipt of notice. The appellants failed to make the payment, even they did not respond to the notice. A second notice was issued on 05.10.2023 informing them that they had defaulted on the second installment as per the agreement, therefore, the agreement to sell was cancelled. The notice was replied to by the appellants stating that the respondents orally agreed to extend the period of second installment of Rs.90 lakhs as

agreed in the agreement to sell by six months.

4. The respondents/sellers filed suit before the Court of the Civil Judge Senior Division, Achalpur seeking a declaration and injunction. The respondents also filed an application for temporary injunction to restrain the appellants from obstructing their peaceful possession over the suit property and from entering the property. The Trial Court allowed the application in favour of the respondents. Feeling aggrieved with the said impugned order, the present appeal came to be filed.

5. The main contention raised by the appellants in this appeal is that the respondents have handed over the possession of the suit property to the appellants under execution of the agreement to sell. Some construction work and other development works such as installation of drainage systems have been undertaken by the appellants. The Trial Court erroneously recorded the findings in its order that the appellants are in unauthorized possession and restrained the

appellants from obstructing the respondents' possession of the suit property and from entering the suit property. Therefore, the impugned order is required to be set aside.

6. Heard the learned counsels appearing for the respective parties. Having gone through the impugned order, the pleadings of the parties as well as the agreement to sell in question, it transpires that the respondents agreed to sell the suit property to the appellants for consideration the amount of Rs.3,89,25,600/- and the amount of Rs.90 lakhs was paid to the respondents at the time of execution of the agreement to sell. This agreement clearly stipulates that the second installment of Rs.90 lakhs shall be paid by 15.07.2023 and remaining balance consideration shall be paid at the time of execution of the sale-deed.

7. The defence set up by the appellants is that after the written agreement to sell, there was an oral agreement between them that the second installment shall be paid six months after

the originally agreed date, which is disputed by the respondents and consequently, the agreement to sell came to be cancelled by the respondents by issuing notice dated 28.09.2023. This disputed aspect is to be determined during the trial. For the purpose of deciding the present appeal, particularly, the point of possession is very relevant.

8. This takes me to para 16 of the impugned order, where the Trial Court has mentioned admitted facts. Perusal of this para goes to show that the Trial Court has recorded that the possession of the suit property was handed over to the appellants to carry out the development work and for the purpose of level conversion. The attention of this Court is also drawn to para 27 of the impugned order, wherein, it is observed that the appellants' possession over the suit property appears to be illegal, particularly after the respondents issued notices regarding cancellation of agreement to sell. The Trial Court further observed that such possession over unauthorized construction cannot be protected under the law.

9. Taking help of these findings of the Trial Court, the learned counsel for the appellants vehemently submitted that this demonstrates that the appellants are in possession of the suit property but the Trial Court, in spite of its own finding went on to pass the order restraining the appellants from obstructing the possession of the suit property and entering into the suit property. Therefore, the impugned order needs to be set aside.

10. Conversely, Mr Agrawal, learned counsel appearing on behalf of the respondents vehemently submits that the appellants have shown the impugned order in a selective and piecemeal manner. According to him, if the entire impugned order is read, it will reveal the fact that the Trial Court is of the opinion that possession over the suit property was never handed over to the appellants. The terms and conditions of the agreement were also read by the learned counsel for the respondents.

11. Perusal of the agreement, particularly on the point of possession reveals that the possession over the suit property was to be handed over at the time of the sale-deed. However, the respondents permitted the appellants to carry out development work which included demarcating plots, conducting earthwork and constructing drainage, apart from giving permission to fix a board. This has been referred in later part of the impugned order by the First Appellate Court.

12. In wake of the clear terms and conditions in the agreement to sell indicating that the possession of the suit property will be handed over at the time of sale-deed, giving permission to demarcate the plots, to do earthwork and drainage work and to fix the board cannot be said to be the act of handing over the possession. By giving this permission, the respondents never intended to hand over the possession of the suit property. This aspect has also been very well dealt with by the Trial Court in its impugned order. However, it appears that the Trial Court got carried away by the conditions/terms

granted by the respondents to the appellants and erred in holding that it amounts to licensing of the alleged suit property and consequently, the Court erroneously held that the appellants are in possession of the suit property. Considering the agreement to sell and the conduct of the parties post agreement, *prima facie* it appears that the possession was never handed over to the appellants, as argued by the learned counsel for the appellants.

13. A reference can be made to the decision of the Hon'ble Supreme Court in the case of *Seshasayee Steels P. Ltd. Vs Assistant Commissioner of Income Tax, 2020 (14) SCC 774*, wherein the Hon'ble Supreme Court in paras 13 and 14 has held as under :

"17. Clause 16 is crucial, and the expression used in Clause 16 is that the party of the first part hereby gives 'permission' to the party of the second part to start construction on the land. Clause 16 would, therefore, lead to the position that a license was given to another upon the land for the purpose of developing the land into flats and selling the same. Such license cannot be said to be 'possession' within the meaning of Section 53A, which is a legal concept, and which denotes control over the land and

not actual physical occupation of the land. This being the case, Section 53A of the T.P. Act cannot possibly be attracted to the facts of this case for this reason alone.”

14. The argument of the learned counsel for the appellants that the ratio will not applicable, is required to be discarded for the reason that though in the case mentioned above is related to the case of the assessee for the purpose of income tax, the Supreme Court has gone into the terms of the conditions as well as decided the nature of possession *vis-a-vis* Section 53 of the T.P. Act.

15. Thus, there is material available on record to *prima facie* suggest that the respondents are in possession of the suit property. Therefore, except the finding of the Trial Court that the appellants were in unauthorized possession of the suit property, no other finding requires any interference. Accordingly, the appeal fails and it is **dismissed**.

(M. W. CHANDWANI, J.)