



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO. 1825 OF 2024

Hasan Amir Raje

....Petitioner

VERSUS

Shaikh Nasir Saheblal & others

.....Respondents

.....

Mr. G. R. Syed, Advocate holding for Mr. S. S. Dande, Advocate for the Petitioner.

Mr. P. R. Katneshwarkar, Senior Counsel instructed by Mr. S. D. Kotkar, Advocate for Respondent No. 4.

Mr. D. R. Markad, Advocate for Respondent Nos. 1 to 3.

CORAM : R. M. JOSHI, J.

DATE : 28th FEBRUARY, 2025.

PER COURT :

1. Leave granted to place documents on record.
2. Unsuccessful Plaintiff in Special Civil Suit No. 84/2023 being aggrieved by rejection of application Exhibit 5 and confirmation thereof in Misc. Civil Appeal No. 91/2023 has preferred this petition.
3. The facts which are necessary for decision of this petition can be narrated in brief as under :-

Petitioner has filed suit in respect of Gat No. 383 admeasuring 9 H 76 R situated at village Shendi, Tq. & Dist.

Ahmednagar. The suit is filed for specific performance of contract, declaration and recovery of possession. It is the case of the Petitioner/Plaintiff that Defendant Nos. 1 to 3 have executed agreement to sale in his favour in respect of the suit property on 22.11.2016 after accepting part consideration. In the said agreement, there was a condition incorporated for seeking permission of the competent authority for the said transaction. An application was moved by Defendant Nos. 1 to 3 on 01.02.2018 seeking such permission which came to be granted on 31.03.2021. It is further case of Petitioner that there was a suit filed by Defendant No. 4 being Regular Civil Suit No. 321/2016 in respect of the subject property for specific performance of contract against Defendant Nos. 1 to 3 herein. This suit was dismissed by the Trial Court however, the First Appellate Court in Regular Civil Appeal No. 21/20018 allowed the appeal and decreed the suit and granted decree of specific performance of contract. Though second appeal came to be filed by Defendant Nos. 1 to 3, it was subsequently withdrawn. Now, admittedly, there is sale-deed executed by Defendant Nos. 1 to 3 in favour of Defendant No. 4 in respect of the suit property. The present suit is filed for declaration that the sale-deed executed by Defendant

Nos. 1 to 3 in favour of Defendant No. 4 is not binding on the Petitioner/Plaintiff.

4. With these averments, application Exhibit 5 came to be filed for restraining Defendant No. 4 from creating third party interest in the suit property. This application was rejected by Trial Court by order dated 06.09.2023. Challenge to the said order in Misc. Civil Appeal No. 91/2023 was also unsuccessful. Hence, this petition.

5. Learned counsel for Petitioner submits that the Petitioner has paid substantial amount towards part consideration which can be ascertained from the documents placed before the Trial Court indicating receipt of consideration in cash by these Defendants. It is his submission that the Courts below have ignored the said evidence which has resulted into rejection of application Exhibit 5. It is his further submission that the suit for specific performance of contract filed by Defendant No. 4 in the year 2016 was hopelessly barred by limitation as the said agreement to sale between the parties was of the year 1994. Thus, it is his contention that the Petitioner has no case on merit and in order to ensure that there is no further complications and multiplicity of proceedings, the Courts below

ought to have granted temporary injunction. He also contends that this Court has granted interim relief by order dated 14.02.2024 and hence direction be issued to the Trial Court for expeditious disposal of the suit by continuing interim relief. He has relied upon judgment of the coordinate bench of this Court in case of Shri Nandu @ Nandkishor vs. Sau Durgabai, in Appeal Against Order No. 11/2023, to support his submission.

6. Learned Senior Counsel for Respondents opposed the petition. He has drawn attention of the Court to the agreement to sale between Petitioner/Plaintiff and Defendant Nos. 1 to 3. It is his submission that the Plaintiff having full knowledge of the pendency of the suit has entered into agreement to sale and as such Petitioner has no right to claim any prejudice being caused to him by execution of sale-deed by Defendant Nos. 1 to 3. It is his further submission that the decree passed in Regular Civil Suit No. 321/2016 is not challenged till date and hence Plaintiff/Petitioner has finally no case to make out on merit to seek cancellation of sale-deed executed by Defendant Nos. 1 to 3 in his favour.

7. There is no dispute about the fact that there was agreement to sale between Defendant Nos. 1 to 3 and Defendant No. 4 in respect of the suit property earlier in time than the agreement to sale of present Petitioner. Further, the suit filed by Defendant No. 4 is decreed. The said decree still holds the field. In such circumstances, this Court finds substance in the contention of learned Senior Counsel for the Respondents that in absence of challenge to the said decree, in all probabilities, the Petitioner may not have a case for seeking cancellation/declaration in respect of the sale-deed.

8. In a case where the sale-deed is executed pursuant to the decree passed by the Competent Court or even otherwise with the execution of sale-deed the right, title and interest stand vested in Defendant No. 4 and therefore, there would be no justification to restrain Defendant No. 4 from creating any third party interest in the suit property, if he desires so.

9. Though it is sought to be argued on behalf of the Petitioner that Defendant Nos. 1 to 3 by withdrawing the second appeal have colluded with Defendant No. 4, prima facie, this

contention is not acceptable for the reason that Defendant Nos. 1 to 3 contested the suit filed by Defendant No. 4 till First Appellate Court. In any case, since there is no challenge to the said decree passed by the Competent Court, this Court does not wish to enter upon the said controversy at this stage.

10. Suffice it to say that for the aforestated facts, the Trial Court was justified in refusing interim relief. Hence, petition is dismissed.

11. It is clarified that all observations made herein above are prima facie in nature for the purpose of decision of petition and that Trial Court shall not be bound by the same.

(R. M. JOSHI)
Judge

dyb