



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

976 WRIT PETITION NO. 12236 OF 2024

VIJAY VISHNUPRASAD MARDA AND OTHERS
VERSUS
NIKHIL RAJKUMAR LUNE

Mr. A. P. Bhandari, Advocate for the Petitioners
Mr. A. K. Gawali, Advocate for the Respondent

CORAM : R. M. JOSHI, J.

DATE : 18th SEPTEMBER, 2025

P.C. :-

1. This Petition takes exception to the concurrent findings recorded by the Trial Court while deciding Exhibit 5 in Spl. Civil Suit No. 79/2021 and confirmation of the said order by the District Court in Misc. Civil Appeal No. 39/2021.

2. Petitioners are Defendants in Spl. Civil Suit No. 79/2021 which is filed by the Respondent-original Plaintiff for specific performance of the contract. Petitioner No.4 was the owner of the suit property bearing Survey No. 283/1-B-2, 283/1-B-3, 283/1-B/1-B and 283/1-B/1-A to the extent of 195 plots. It is a case of the Plaintiff that the Defendant No.1 executed agreement to sale of the suit plots. It is further case of the Plaintiff that he paid a sum of Rs.16 lakhs in cash and thereafter by bank transaction further amount of Rs.10 lakhs came to be paid to the Defendant No.1. It is alleged that in spite of the said

transaction, Defendant No.1 executed sale deed in respect of the subject plots in favour of other Defendants. In this backdrop of the facts, suit came to be filed for specific performance of contract and an Application was moved for seeking interim relief.

3. Defendant No.1 denied the contention of the Plaintiff about execution of any agreement to sale in respect of the subject plots. It is contended that no consideration even in part was received by him. It is claimed that the suit property came to be sold by registered sale deed in favour of Defendant Nos. 2 to 4 and prior thereto a public notice was issue on 25/09/2020 showing intention to sale suit property. It is contended that the suit plots are sold to these Defendants without any objection being raised by any one including Plaintiff and after accepting the entire consideration. It is further claimed by Defendant No.1 that after getting knowledge of the preparation of document to support fabricated transaction of agreement to sale, a complaint has been lodged with the concerned Police Station in this regard.

4. The learned Trial Court allowed Exhibit 5 and restraining Defendant Nos.2 to 4 from alienating the suit properties of creating encumbrances over the suit property till disposal of the suit by order dated 25/08/2021. This order came to be challenged by filing Misc. Civil Appeal No. 39/2021 unsuccessfully before District Court and hence, this Petition.

5. Learned Counsel for the Petitioners submits that the Trial Court as well as the District Court have failed to take into consideration the fact that the original Defendant Nos.2 to 4 have a bonafide purchasers of the suit plots. It is his submission that the entire consideration has been paid by them to the erstwhile owner and that the said transaction has been effected after giving due public notice and without objection thereto from any one. It is thus his contention that it was not open for the Trial Court to pass any injunction restraining the Defendants from creating any third party interest in the suit plots. He has placed reliance on the judgment of this Court in case of ***Prakash Gobindram Ahuja Vs. Ganesh Pandharinath Dhonde and others***¹. He has further submitted that there is no finding recorded by the Trial Court about there being no evidence indicating payment of Rs.16 lakhs by cash.

6. The contesting Respondent supported the impugned orders.

7. It is settled position of law that in exercise of writ jurisdiction, in challenge to concurrent findings of fact by more than one Court, this Court is expected to be slow in causing interference in the order impugned, unless any perversity is shown therein. Herein this case Plaintiff has filed suit with specific plea of execution of agreement to sale by the Defendant No.1 in respect of suit plots. This agreement to

¹ AIR 2017 (NOC) 631

sale is said to have been signed by the Defendant No.1 in presence of witnesses. Though it is observed that there is no evidence to indicate payment of Rs.16 lakhs in cash, the said issue would be required to be decided at the time of evidence. There is, however, prima facie observations made by the Trial Court with regard to the payment of Rs.10 lakhs by Plaintiff to Defendant No.1. At least at this stage there is nothing on record to indicate that the said amount was paid for any other/different reason than by way of part payment of consideration towards the transaction in question.

8. No doubt the Trial Court would have to decide the issue with regard to the plea raised by rival side about execution of the agreement to sale, readiness and willingness of the purchaser to perform the part of the contract and discretion to be used while granting specific performance. It is however, necessary to note that though these issues would be decided after leading evidence, prima facie there is material on record to indicate the execution of agreement to sale by Defendant No.1 in presence of witnesses and payment of part consideration of Rs.10 lakhs. In this backdrop, if the Trial Court has held that the balance of convenience lies in the favour of the Plaintiff and that it would be appropriate that Defendant Nos.2 to 4 are enjoined from alienating the suit properties or from creating any encumbrances over the suit properties till disposal of the suit, no fault could be found

therein. In the facts of the case, the said observations could not be termed as perverse. The injunction granted by Trial Court is in force since August, 2021 and suit is at the stage of evidence, there would be no justification to cause interference in the orders impugned. It would be sufficient to ask the Trial Court to decide the suit as expeditiously as possible.

9. In view of the above, Petition has no merit and hence, stands dismissed.

(R. M. JOSHI, J.)

ssp