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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 322 OF 2025
IN
SECOND APPEAL (ST) NO. 27151 OF 2023

Satish Dagaji Ahire and Others … Applicants/Appellants
Vs.
Kamlakar Baburao Pangarkar and Others … Respondents

Mr. Rupesh Geete a/w. Ms. Priya Dangat i/b. Satyaki Law Associates for the Applicants/Appellants.

CORAM : GAURI GODSE, J.

DATE : 4th FEBRUARY 2025

ORDER :

1. This application is for condonation of delay of 23 days in filing the appeal. Learned counsel for the applicants submits that the delay caused in filing the appeal is unintentional. He submits that the reasons for the delay are explained in paragraph 5 of the application. He submits that due to illness of applicant no. 1 the appeal could not be filed within time.

2. The second appeal is preferred by defendant nos. 4 to 6 to challenge the concurrent judgments and decrees passed in the suit for specific performance filed by respondent no. 1. Respondent no. 1 had prayed for specific performance. The agreement in his favour

is executed by defendant nos. 1 to 3. During the pendency of the suit, the present appellants claimed to have purchased the suit property from defendant nos. 1 to 3. Hence, they were added as party defendants in the suit. The decree for specific performance is passed against all the defendants.

3. The first appeal was preferred only by the present appellants i.e. subsequent purchasers. During the pendency of the suit original defendant nos. 1 to 3 accepted the decree for specific performance and did not file any appeal. The first appellate court confirmed the trial court’s decree, hence this second appeal by defendant nos. 4 to 6.

4. I called upon the learned counsel for the appellants to point out whether the second appeal raises any substantial question of law. Learned counsel for the appellants submits that the appellants are bonafide purchasers for value without notice. He submits that inspite of taking due diligence the appellants were unaware about the pendency of the suit and the agreement in favour of the plaintiff. He submits that the appellants were made to believe that defendant nos. 1 to 3 had every right to execute the sale deed. He submits that the appellants were never intimated about the agreement in favour of the plaintiff or about the pendency of the suit. He submits

that defendant no. 5's husband was examined in support of the appellants' contention that inspite of making necessary inquiry they were unaware about the agreement in favour of the plaintiff and pendency of the suit. He relies upon oral evidence led by the husband of defendant no.5.

5. Learned counsel for the appellants submits that a public notice was issued by some Advocate in respect of the suit property, pursuant to which the appellants made necessary inquiry and they were intimated that there was no right created in favour of any party in respect of the suit property. He submits that even in the revenue record there was no entry made regarding any encumbrance with reference to the agreement in favour of the plaintiff. He thus submits that the appellants are bonafide purchasers and thus in view of Section 43 of the Transfer of Property Act, 1882 the agreement in favour of the plaintiff would not bind these appellants. He submits that both the courts have not properly appreciated the evidence produced on record to show that the appellants were bonafide purchasers for value without notice. He therefore submits that the aforesaid ground raise substantial questions of law.

6. I have perused the papers of the second appeal. The suit

agreement dated 17th February 1994 was executed by defendant nos. 1 to 3 in favour of the plaintiff. The suit was filed on 7th August 1996. During the pendency of the suit defendant nos. 1 to 3 executed sale deed in favour of defendant nos. 4 to 6 i.e. present appellants on 4th October 1996. Hence they were added as party defendants. These defendants pleaded to be bonafide purchasers for value without notice; however the pleadings were not supported by any evidence. Nothing was pleaded and proved that necessary inquiry was made by these defendants before entering into sale deed with defendant nos. 1 to 3. There is no evidence to show that that due inquiry was made by these defendants by issuing any public notice or otherwise. Admittedly, the sale deed in favour of these defendants is during the pendency of the suit. Hence the sale deed in favour of these appellants will be hit by the provisions of Section 52 of the Transfer of Property Act, 1882. In the absence of any proof that defendant no. 4 to 6 had made necessary inquiry before entering into sale deed, the provisions of Section 43 relied by by the learned counsel for the appellants would be of no consequence.

7. Both the courts accepted the contention of the plaintiff regarding valid and subsisting agreement in his favour and payment of part consideration by the plaintiff. Issue regarding

readiness and willingness is also concurrently held in favour of the plaintiff. The issue regarding the appellants claim of being bonafide purchaser for value without notice is disbelieved by both the courts for want of evidence in support of their contention.

8. There is no illegality or perversity in the concurrent findings recorded by both the courts. The appellants who claim to be purchasers during the pendency of the suit would not be entitled to oppose the decree of specific performance in favour of the plaintiff. The suit agreement would be binding upon these appellants in view of clause (b) of Section 19 of the Specific Relief Act, 1963, read with Section 52 of the Transfer of Property Act.

9. The second appeal does not raise any substantial question of law. Hence, I do not find it appropriate to issue notice to the respondents in the application for condonation of delay. In the facts and circumstances of the case delay is condoned and the Interim Application No. 322 of 2025 is allowed.

10. For the reasons stated above, second appeal is dismissed.

11. In view of dismissal of the second appeal, Interim Application No. 323 of 2025 is disposed of as infructuous.

[GAURI GODSE, J.]