



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10861 OF 2024**

Pinak Dhiraj Gala and Ors. ... Petitioners
versus
Mohammad Hashim Mohammad Quddus Ansari ... Respondent

Mr. Vishal Kanade with Mr. Siddharth Kakka, Ms. Tanaya i/by Mr. Siddharth Kakka, for Petitioners.

Mr. Atul Damle, Sr. Advocate with Mr. R.D.Suryavanshi, for Respondent.

**CORAM: N.J.JAMADAR, J.
DATE : 25 FEBRUARY 2025**

P.C.

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
2. The Petitioners-Defendants take exception to a judgment and order dated 7 May 2024 passed in Misc. Civil Appeal No.21 of 2023 passed by the learned District Judge, Bhiwandi, whereby the appeal preferred by the Petitioners came to be dismissed affirming the order passed by the learned Civil Judge, Bhiwandi on 19 August 2023, restraining the Defendants from carrying out any construction over the suit property and creating third party interest therein, till the final decision of the suit.
3. Background facts leading to this Petition can be summarised as under :
 - 3.1 For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the trial Court.
 - 3.2 The Plaintiff had instituted a suit bearing Special Civil Suit No.306 of

2001 against Raghunath Kanhu Patil and others for specific performance of contract to sell land bearing Survey No.83 Hissa No.8 admeasuring 2 Acres and 16 Gunthas (larger property). By an ex-parte judgment dated 5 February 2008, the said suit came to be decreed. Original owners have filed an application for setting aside the said ex-parte decree, which is subjudice.

3.3 The Plaintiff filed Execution Petition No.6 of 2012 for execution of the said ex-parte decree. The said Execution Petition was dismissed for non-prosecution on 6 February 2017. An application for restoration of the said Execution Petition filed by the Plaintiff – decree holder is also sub-judice.

3.4 In the intervening period, the original owners had executed a registered sale deed in favour of Rajlaxmi Textiles Park Pvt. Ltd. (Rajlaxmi Textile), and, thereby professed to sell the larger property.

3.5 The Plaintiff filed another Suit, being Regular Civil Suit No.177 of 2010. During the pendency of the said Suit, on 21 April 2011, an order was passed by the learned District Judge – 5, Thane in Misc. Civil Appeal no.41 of 2011 restraining the said Rajlaxmi Textiles from carrying out any further construction and to change the nature of the larger property, till the disposal of the suit.

3.6 On 3 November 2015, the aid RCS No.177 of 2010 also came to be dismissed for non-prosecution. The Plaintiff has filed an application for restoration of the RCS No.177 of 2010, which is also subjudice.

3.7 On 13 August 2013, Rajlaxmi Textiles executed a registered Sale Deed in favour of Shantilal Maru and others and conveyed an area admeasuring 3717 sq. meters out of the larger property. On 30 September 2014, Rajlaxmi Textiles again executed another registered Sale Deed in favour of Navalkishor Lalchand Soni, and thereby sold 5883 sq. meters land out of the larger property to Navalkishor Lalchand Soni. Under the Sale Deed dated 31 December 2020, the said Navalkishor Lalchand Soni conveyed the said 5883 sq. meters land out of larger property (the suit property) in favour of the Defendants.

3.8 Asserting that on the strength of the said conveyance dated 31 December 2020, which is *per se* illegal and invalid, the Defendants have started to erect structures over the suit property, the Plaintiff instituted a suit seeking perpetual injunction to restrain the Defendants from creating third party rights in the suit property and erecting any form of construction thereon.

3.9 In the said suit, the Plaintiff sought temporary injunction. By an order dated 19 August 2023, the learned Civil Judge was persuaded to allow the application observing, *inter alia*, that the Plaintiff has made out a *prima facie* case and an order of injunction was necessary to preserve the subject matter of the suit till the final disposal of the suit. In appeal, the learned District Judge found no ground to interfere with the said order.

3.10 Being aggrieved, the Defendants have invoked the writ jurisdiction of

this Court.

4. Mr. Kanade, learned Counsel for the Petitioners, submitted that the material on record indicates that the Defendants are bonafide purchasers for valuable consideration. The Defendants were completely unaware of the proceedings between the parties, including the vendors of the predecessor in title of the Defendants and Plaintiff. Mr. Kanade would urge that, in the circumstances of the case, the learned Civil Judge as well as the learned District Judge ought to have taken into account the consequences that flow from the dismissal of the Execution Petition, RCS No.117 of 2010 and the pendency of the proceedings to set aside the ex-parte decree passed in favour of the Plaintiff filed by the original land owner. Thus, the institution of suit in the year 2020, primarily based on an ex-parte decree passed on 5 December 2008, especially when the execution petition came to be dismissed in default in the year 2017, ought to have entered determination while appreciating prima facie case and, more importantly, balance of convenience.

5. Mr. Kanade would urge that over 95% work of erection of structure in the nature of godown was complete. In that view of the matter, the Courts could not have restrained the Defendants from erecting the structures and using the suit properties for the purpose of godown, as the balance of convenience clearly tilted in favour of the Defendants, who have invested a huge amount.

6. Mr. Kanade would further urge that in the face of the frame of the suit; which is for perpetual injunction simplicitor without seeking the relief of declaration of title, when there is a clear cloud over the title of the Plaintiff, and no relief of declaration qua the registered Sale Deed executed in favour of the Defendants has been claimed, the order of comprehensive interim injunction is not legally sustainable. Mr. Kanade placed reliance on the decision of the Supreme Court in the case of Anathula Sudhakar V/s. P. Buchi Reddy and Ors.¹.

7. Mr. Damle, learned Senior Advocate for the Plaintiff, stoutly resisted the submissions on behalf of the Petitioners. It was urged that the instant case is one of execution of instruments successively to defeat the right of legitimate claimant. Not only the principle of lis pendense comes into play, but there is a binding decree of specific performance. In the face of the said decree, neither the original holder could have executed instruments to transfer the larger property, nor the subsequent transferees could have conveyed better title than they possessed. In these circumstances, the Courts below have not committed any error in passing the impugned orders.

8. Mr. Damle joined the issue on the balance of convenience by canvassing a submission that the structure which has been erected is in the nature of a shed, which could be erected and dismantled in a matter of days.

1 (2008) 4 SCC 594

Therefore, no equities can be claimed on the basis of the erection of such structures.

9. At the outset, it is necessary to note that the challenge to the impugned orders based on the frame of the suit, does not merit countenance. The question of cloud on the title of the Plaintiff does not really arise for consideration in the instant case. Evidently, the Plaintiff's claim is based on a contract for sale of the larger property executed by the original owner in favour of the Plaintiff. The decree passed in Special Civil Suit No.306 of 2001 dated 5 December 2008 recognizes and cements the said right of the Plaintiff to get the specific performance of the said contract. At this stage, the fact that the said decree was passed ex-parte is of no moment. Till the said decree is set aside, reversed or varied, the rights emanating from the said decree enure for the benefit of the Plaintiff.

10. The second limb of the submission of Mr. Kanade premised on the dismissal of the execution petition and RCS No.177 of 2010 instituted against the vendor of the predecessor in title of the Defendants also does not detain the Court. It is not the case that the limitation period for execution of the decree passed on 5 December 2008 had expired when the application for restoration of the said execution petition was filed. In fact, the Court finds that when Rajlaxmi Textiles executed conveyance of the suit property in favour of Navalkishor Soni on 31 September 2014, an injunction order passed

by the learned District Judge in MCA No.41 of 2011 was running against Rajlaxmi Textiles. Indeed, the said injunction was to restrain Rajlaxmi Textiles from carrying out any further construction and to change the nature of the suit property till the disposal of the said suit. However, that does not detract materially from the fact that on the date the said conveyance was executed by Rajlaxmi Textiles, not only lis was pending but an injunction order was in operation.

11. In the backdrop of these multiple proceedings, especially the decree for specific performance, dated 5 December 2008, passed in favour of the Plaintiff in Special Civil Suit No.306 of 2001, the claim of the Defendants of being bonafide purchasers for value without notice, would be required to be appreciated at the trial. Prima facie, it appears that the defendants will have to surmount an insuperable impediment. From the aforesaid standpoint, the trial Court as well as the learned District Judge cannot be said to have committed any error in returning a finding that the Plaintiff has made out a strong prima facie case. The conveyance in favour of the Defendants is in teeth of decree in Special Civil Suit No.306 of 2001.

12. On the aspect of balance of convenience, I find substance in the submissions of Mr Damle, learned Senior Advocate for the Respondent. Evidently, the Defendants claimed to have obtained commencement certificate on 21 September 2022 to erect the structure at the suit property.

The Plaintiff had instituted a suit on 25 August 2022. It is not a case that the Defendants had already erected the structures before the institution of the suit. Moreover, the structure is not of permanent nature. In the circumstances of the case, especially having regard to the chequered history of litigation in relation to the suit property, prima facie, it does not appeal to human credulity that the Defendants could not have learnt about the passing of the decree and the pendency of the proceedings had they made diligent inquiries. Thus, I am not inclined to accede to the submission of Mr. Kanade that the balance of convenience tilts in favour of the Petitioners-Defendants.

13. Having noticed the manner in which the successive instruments have been executed during the pendency of the proceedings, and even in teeth of the decree passed in Special Civil Suit No.306 of 2001, this Court finds that the order of injunction granted by the trial Court is wholly justified. In any event, the impugned orders do not suffer from such jurisdictional error, procedural defect or infirmity in exercise of discretion as to warrant interference by this Court in exercise of supervisory jurisdiction. The Writ Petition, therefore, deserves to be dismissed.

14. Hence, the Writ Petition stands dismissed.

15. Rule discharged.

16. No costs.

(N.J.JAMADAR, J.)