

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 900 OF 2023
WITH
INTERIM APPLICATION NO. 16739 OF 2023
IN
APPEAL FROM ORDER NO. 900 OF 2023**

Shri. Kumagouda Annasaheb Patil ... **Appellant**
Versus
Chandrakant Laxman Shelar And Ors ... **Respondents**

**WITH
INTERIM APPLICATION NO. 55 OF 2025
IN
APPEAL FROM ORDER NO. 900 OF 2023**

Shri. Rajesh Waman Mhatre ... **Applicant**
Versus
Chandrakant Laxman Shelar ... **Respondent**

Mr. Prasad Dhakephalkar, *Sr. Advocate, i/b Mr. Amol Mhatre
a/w Mr. Kishor Patil for the Appellant.*

Mr. G.S. Godbole, *Sr. Advocate i/b Mr. R.S. Datar & Ms. Druti
Datar for Respondent Nos. 1 and 3.*

Mr. Rajesh Kachare *i/b Mr. Ajay S. Patil for Intervenor/Applicant
in IA/55/2025.*

CORAM : SANDEEP V. MARNE, J.

DATE : 3 MARCH 2025.

P.C. :

1) The Appeal challenges order dated 19 August 2023 passed by the Civil Judge Senior Division, rejecting the application for temporary injunction at Exhibit-5 filed by the Appellant-Plaintiff.

2) Plaintiff has instituted Special Civil Suit No. 225 of 2022 in the Court of Civil Judge Senior Division, Thane seeking specific performance of Agreement dated 14 May 1991. Plaintiff has also challenged Deed of Conveyance dated 27 December 2013 executed by Defendant No.1 in favor of Defendant No.3, which is registered in the office of Sub Registrar of Assurances at Thane on 25 February 2014. The Plaint also contains alternate prayer of damages of Rs.75 crores. In the suit, Plaintiff prayed for temporary injunction, seeking appointment of Court Receiver and a restraint order against the Defendant not to create any third-party rights in respect of the Suit Property. The Trial Court has proceeded to reject the application for temporary injunction by order dated 19 August 2023.

3) The first ground cited by the Trial Court for rejection of temporary injunction in favour of Plaintiff is that the suit might possibly be barred by limitation. Mr. Dhakephalkar, the learned senior advocate appearing for the Appellant-Plaintiff would submit that the Agreement dated 14 May 1991 does not prescribe any particular date for execution of the sale deed and that therefore under provisions of Article 54 of the Limitation Act, the time would start running only from the date of refusal on the part of Defendant No.1 to perform the agreement. Inviting my attention to the pleadings in the plaint, he would submit that the Defendant No.1 refused to perform his part of the contract in February 2022 and

accordingly the suit cannot be treated to be barred by limitation. While this can be an arguable issue to be decided at the time of final hearing of the suit, what needs to be taken note of at this stage, is passage of 31 long years from the date of execution of the agreement dated 14 May 1991. This Court cannot lose sight of the fact that Plaintiff instituted suit for specific performance of agreement dated 14 May 1991 after passage of 31 long years. Therefore, even if the Plaintiff finally succeeds in convincing the Trial Court that is suit is within limitation, passage of 31 long years in institution of the suit would definitely come in his way for grant of temporary injunction. In my view therefore though not for technical reason of limitation, but at least for delay on the part of Plaintiff in filing the suit for seeking specific performance of agreement dated 14 May 1991 after 31 long years, Plaintiff can be denied order of temporary injunction.

4) The second reason cited by the Trial Court for refusing temporary injunction in favour of the Plaintiff is execution of the Conveyance Deed dated 27 December 2013 by Defendant No.1 in favour of Defendant No.3. It appears that the Trial Court has recorded a *prima facie* finding that Plaintiff was aware about execution of the Conveyance Deed dated 27 December 2013, but still took a calculated chance of not filing suit within reasonable time of execution of the said Conveyance Deed. Mr. Dhakephalkar would raise a strong objection to the finding of the Trial Court about acquisition of knowledge on the part of the Plaintiff about execution of the said Conveyance Deed. He would submit that the Trial Court has erroneously relied Memorandum of Understanding dated 28 February 2012 for the purpose of inferring knowledge on the part of Plaintiff about execution of the Conveyance Deed. He would submit that the said document in the form of MOU dated 28 February 2012

is fabricated document. He would submit that the MOU does not bear the signature of Plaintiff. He would further submit that there is no reference about execution of the said MOU in the Conveyance Deed. He would further submit that the consideration shown to have been paid in the said MOU does not match with the consideration shown to have been paid in the Conveyance Deed. He would therefore submit that the said MOU is clearly a doubtful document. That Plaintiff has procured opinion of a handwriting expert to demonstrate before the Trial Court that the said document does not bear signature of the Plaintiff. All these contentions may make out an arguable case for Plaintiff and the Trial Court, after evaluating evidence on record, would be in position to record a definitive finding as to whether Plaintiff indeed was witness to the alleged MOU dated 28 February 2012 or not. As of now, for the purpose of deciding the Plaintiff's entitlement for temporary injunction, there is some doubt created in the mind of the Trial Court about possible knowledge on the part of Plaintiff about the transaction of Conveyance Deed executed in favour of Defendant No.3 in the year 2013.

5) It also appears that the Trial Court has relied upon measurement *panchanama* dated 27 May 2019 prepared by the office of Deputy Superintendent of Land Records, Thane and it appears that the said *panchanama* shows presence of Plaintiff at the time of conduct of measurements. Mr. Dhakephalkar has submitted that Plaintiff is not the person, who is shown to have presented himself at the time of conduct of the said measurement. This again is a triable issue, which the Trial Court would be in position to decide finally after evaluating the evidence on record.

6) As of now, there is some material on record to infer possible knowledge on the part of Plaintiff about execution of Conveyance Deed dated 27 December 2013 by Defendant No.1 in favour of Defendant No.3. Even otherwise, it becomes difficult to believe that Plaintiff could not acquire knowledge of execution of the said Conveyance Deed in favour Defendant No.3, which is a registered document as Defendant No.3 must have taken at least some steps to claim title and possession in respect of the land in question during 9 year gap period between 2013 and 2022. It must be noted here that the suit land is located in village Balkum, which now form start of Thane City. It therefore becomes difficult to believe that the Plaintiff would not acquire any knowledge about execution of conveyance in favour of Defendant No.3 for 9 long years between 2013 to 2022.

7) Mr. Dhakephalkar would submit that Plaintiff cannot be accused of not filing suit within a reasonable time as he was time and again assured by Defendant No.1 that sale deed would be executed in his favour immediately after end of the litigation relating to the suit land. He has placed of record several alleged correspondences between Plaintiff and Defendant No.1 right since the year 2008 to support his contention that Defendant No.1 kept on promising the Plaintiff that sale deed in respect of the suit land would be executed in his favour. He has invited my attention to the letter dated 30 December 2013 allegedly executed by Shri. Chandrakant Laxman Shelar promising to execute Conveyance Deed immediately after mutation of his name to the revenue records. However, the said letter dated 30 December 2013 appears to have been signed by the constituted attorney of Defendant No.1 and not by Defendant No.1 himself. Similar is the position in respect of letter

dated 10 July 2015. So far as last such letter dated 9 March 2021 is concerned, the same appears to have been signed by Mr. William Simon Mascernhas, the constituted attorney of Defendant No.1.

8) Considering the above position, in my view, the Trial Court has not committed any gross error in rejecting the application for temporary injunction. Defendant No.3 has purchased the land vide Deed of Conveyance dated 27 December 2013. Though the Deed reflects total consideration of Rs.15.26 crores, there is no denial to the fact the amount of Rs.6.40 crores is actually paid in the year 2013. Mr. Dhakephalkar would question the so-called consideration of 15.26 crores by submitting that a supplementary Sale Deed is shown to have executed in the 2021 between Defendant Nos. 1 and 3 under which, consideration of Rs.10 crores is shown to have been adjusted towards legal expenses. Be that as it may. So far as the balance consideration is concerned, there appears to be no dispute that the same might have been paid by Defendant No.3 to Defendant No.1 in the year 2013. Thus there is a purchase in favour of Defendant No.3 for valuable consideration.

9) Plaintiff waited for a period of 9 long years after execution of the said Conveyance Deed to file his suit for specific performance of agreement allegedly executed in his favour 31 years ago on 14 May 1991. In my view, this is not a fit case where temporary injunction could have been granted in favour of the Plaintiff. I therefore do not find any valid reason to interfere in the order dated 19 August 2023 passed by the Trial Court. The Appeal is accordingly **dismissed.**

10) Interim Application No. 55 of 2025 is not pressed by Mr. Kachare, the learned counsel appearing for the Applicant therein and the same is accordingly disposed of.

11) Interim Application No. 16739 of 2023 is for interim stay and which would no longer survive in the light of dismissal of the Appeal from Order.

12) After the order is pronounced, Mr. Dhakephalkar would pray for continuation of status quo order passed by this Court on 11 July 2024. The request is opposed by Mr. Godbole. Considering the facts and circumstances of the case the order of status quo shall continue for period of four weeks.

[SANDEEP V. MARNE, J.]