

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3464 OF 2025**

Ramchandra Malhari Nimhan & Ors ..Petitioners

Versus

Vitthal Eknath Nimhan & Ors ...Respondents

Mr. Drupad S. Patil, with Shruti Chalke, for the Petitioner.
Mr. S.M. Gorwadkar, Senior Advocate, i/b Pratap Patil, for the
Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 18th MARCH 2025

P.C.:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an Order dated 5th February 2025 passed by the learned District Judge, Pune, in MCA No. 76 of 2024, whereby the Appeal preferred by the defendants-respondents came to be allowed by setting aside the order passed by the Trial Court on an Application for injunction (Exhibit “5”) in SCS No. 1112 of 2023.
3. The petitioners-plaintiffs and late Balkrishna Nimhan had initially executed a Power of Attorney on 8th January 1995 in favour of Vitthal Nimhan, defendant no.1. By the said Power of Attorney the plaintiffs had granted authority to defendant no. 1 to develop the property and also execute conveyances. Subsequently, on 10th February 1997, two

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Development Agreements were executed by the plaintiffs in favour of defendant no. 2 and defendant no.3, in respect of 11 R land each. Under the Development Agreements, the defendant nos. 2 and 3 had agreed to pay consideration of Rs. 3,19, 000/- each. Rs. 90,000/- has been paid in each of the Development Agreements. The balance of Rs.2,29,000/- was agreed to be paid within one year of the execution of the said Development Agreements. Those Development Agreements were registered in the year 2006.

4. On 4th February 2023, defendant no.1, in the capacity of the Constituted Attorney of the plaintiffs, executed a Sale Deed in respect of the suit property in favour of defendant nos. 2 and 3. Defendant no.2 is the wife of defendant no.1 and defendant no. 3 is the daughter-in-law of defendant no.1.

5. The plaintiffs instituted a Suit seeking reliefs that, the Power of Attorney dated 8th January 1995 executed in favour of defendant no.1 is void and illegal, the Sale Deed dated 4th February 2023 executed by defendant no.1, on the strength of the said Power of Attorney, in favour of defendant nos. 2 and 3 is also null and void and that defendant nos. 2 and 3 have not acquired any right, title and interest in the suit property on the basis of the said Sale Deed. Consequential relief of injunction was also sought.

6. In the Application for temporary injunction preferred by the plaintiffs, the learned Civil Judge was persuaded to grant temporary injunction and thereby restrain the defendants from causing obstruction to the possession and enjoyment of the plaintiffs over the suit property and also create third party rights in the suit property.

7. In the Appeal the learned District Judge, Pune, was persuaded to interfere with the order of the Trial Court observing , *inter alia*, that the aspect of possession and the fact that plaintiffs had executed three documents and there was huge delay in assailing the said Power of Attorney were not properly appreciated by the Trial Court.

8. Mr. Patil, learned Counsel for the petitioners, submitted that the principal contention of the plaintiffs that the Sale Deed could not have been executed after more than 25 years of the execution of Power of Attorney, which was unregistered, especially on account of the change in law, was not properly appreciated by the learned District Judge. The Development Agreements, on which reliance was placed on behalf of the defendants, contain a recital to the effect that upon payment of the balance consideration, the defendant nos. 2 and 3 would be entitled to seek specific performance of the Agreement and compel the plaintiffs to execute the Sale Deed. Without resorting to the said course, after 25 years, on the basis of said Power of Attorney, Sale Deed came to be executed in favour of defendant nos. 2 and 3 in the year 2023. In the

Sale Deed the balance consideration was shown to have been paid in cash to the Power of Attorney holder. There is no material to substantiate the said claim.

9. Therefore, the learned District Judge could not have interfered with the Order passed by the Trial Court.

10. Mr. Gorwadkar, the leaned Senior Advocate, for the defendants-respondents supported the Order passed by the learned District Judge. It was submitted that the plaint is singularly silent about the Development Agreements in favour of defendant nos. 2 and 3. It is clear from the recitals in the Development Agreements that possession of the suit property was delivered to defendant nos. 2 and 3. The plaintiffs have not even assailed the legality and validity of the said Development Agreements. In these circumstances, the learned District Judge has committed no error in interfering with the order passed by the Trial Court, urged Mr. Gorwadkar.

11. I have perused the material on record.

12. The thrust of the challenge was on the competence of defendant no.1 to execute the Sale Deed on the basis of the Power of Attorney executed in the year 1995, primarily on the ground that it was not registered and adequately stamped. However, this Court finds that in the Plaint there is no whisper about the Development Agreements

which were executed by the plaintiffs in favour of defendant nos. 2 and 3.

13. Under the Development Agreements part consideration was admittedly received by the plaintiffs. There is a clear recital in the Development Agreement that the possession of the suit property was delivered to defendant nos. 2 and 3.

14. In this view of matter, it was incumbent upon the plaintiffs to disclose these documents in the Plaint. At this stage, even if the legality and validity of the Sale Deed on the strength of the said Power of Attorney is put in contest, yet, the fact remains that under the Development Agreements the defendant nos. 2 and 3 were put in possession of the suit property.

15. Resultantly, so far as the aspect of possession, the learned District Judge was justified in interfering with the order passed by the Trial Court.

16. As regards the creation of third party interest in the suit property, Mr. Gorwadkar, the learned Senior Advocate for the respondents, on instructions, submits that the respondents will not create any third party rights in the suit property till the final disposal of the Suit.

17. In this view of the matter, the Petition stands disposed recording the statement on behalf of the respondents that the respondents will not

create any third party interest in the suit property till the disposal of the Suit.

18. The Trial Court shall not be influenced by any of the observations hereinabove while deciding further interlocutory applications and adjudicating the Suit finally.

[N. J. JAMADAR, J.]