



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

WRIT PETITION NO.3970 OF 2025

Baban Sopan Dhokale and Ors. ... Petitioners

versus

Dhnyandeo Gulab Tanpure and Ors. ... Respondents

Mr. Vivek V. Salunke, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 4 APRIL 2025

P.C.

1. Heard the learned Counsel for the Petitioners.
2. The challenge in this Petition is to the judgment and order dated 14 October 2024 passed by the learned District Judge, Pune, whereby the appeal preferred by the Petitioners came to be dismissed affirming the order passed by the learned Civil Judge on an application (Exhibit 5) in Special Civil Suit No.956 of 2023 thereby restraining the petitioners – Defendants from causing obstruction to the possession of the Plaintiffs over the suit property and also from creating third party interest therein till the final disposal of the suit.
3. Respondent Nos.1 to 4 are the holders of agricultural lands bearing Gat No.1221/2 situated at Mauje Sanaswadi, Tal Shirur, Dist. Pune (the suit

property). Defendant No.1 had agreed to purchase the suit property for a consideration of Rs.15 Lakhs. Thereupon, a Sale Deed came to be executed and registered on 19 August 2020. Defendant No.1 had issued six cheques aggregating to Rs.15 Lakhs, towards the consideration. However, the cheques were dishonoured upon presentment. The Plaintiffs asserted that it was agreed between the parties that the possession of the suit property would be delivered to Defendant No.1 and the latter's name would be mutated in the record of rights of the suit property upon the encashment of the said cheques. Defendant No.1 did not pay the consideration and, yet, Defendant No.1 executed an instrument purporting to convey a part of the suit property, more particularly described in paragraph No.1B of the plaint to Defendant Nos.2 to 7. Thus, the Plaintiff instituted a suit for declaration that the Sale Deed dated 19 August 2020 is void and be cancelled and that the Sale Deed executed by Defendant No.1 in favour of Defendant Nos.2 to 7 on 24 October 2021 is not binding on the Plaintiffs, and the consequential relief of injunction.

4. In the said suit, the Plaintiffs sought temporary injunction. By an order dated 9 February 2024, the learned Civil Judge, Sr. Division, Pune, partly allowed the application restraining Defendant Nos.1 to 7 from causing obstruction to the possession of the Plaintiffs over the suit property and from creating third party interest in the suit property till the final disposal of the suit.

5. Learned District Judge did not find any error in the exercise of

discretion, and, by the impugned order, the appeal preferred by the Petitioners came to be dismissed.

6. Mr. Salunke, the learned Counsel for the Petitioners submitted that both the Courts below have committed a grave error in law in entertaining the suit for declaration when the remedy for the Plaintiffs was to seek payment of consideration. Since the Sale Deed can be for the price paid or promised or part paid and part-promised, the title in the suit property passed to the Defendant No.1, immediately upon the execution of the conveyance. Therefore, the suit for declaration that the Sale Deed is void and cancellation of the Sale Deed, is not tenable in law. Strong reliance was placed by Mr. Salunke on the decision of the Supreme Court in the case of Dahiben V/s. Arvindbhai Kalyanji Bhanusali (Gajra) and Ors.¹

7. Mr. Salunke further submitted that the claim of the Plaintiffs that they are in possession of the suit property is against the weight of the material on record. Firstly, in the Sale Deed, there is a clear recital of delivery of possession of the suit property to the Defendant No.1 upon execution of the Sale Deed. Secondly, the Plaintiffs had lodged a report with Police, wherein a categorical assertion was made that the Defendant No.1 forcibly obtained possession of the suit property from the Plaintiffs. In that view of the matter, the Courts below could not have granted injunction in favour of the Plaintiffs.

1 (2020) 7 SCC 366

8. Mr. Salunke further submitted that there was a valid reason for countermanding the payment by Defendant No.1, as the brother of the Plaintiffs had instituted a suit in the year 2018 itself and, suppressing the said fact, the Plaintiffs had executed the Sale Deed. Thus, the Defendant No.1 was justified in withholding the payment. Mr. Salunke further submitted that, at any rate, the Defendants are willing to deposit the entire consideration of Rs.15 Lakhs before the trial Court and, therefore, the order to the extent of restraining the Defendants from causing obstruction to the possession of the Plaintiffs over the suit property deserves to be interfered with.

9. Evidently, there is material to indicate that it was a case of total failure of consideration, shown in the Sale Deed. All the cheques aggregating to the consideration of Rs.15 Lakhs, were dishonoured on presentment. It is true, consideration can be paid or promised or part-paid and part-promised. It is also trite that the failure of consideration may not necessarily render the transaction of sale void and ab-initio. However, this Court cannot lose sight of the fact that the Courts below were exercising equitable jurisdiction. What accentuates the case at hand is the conduct of Defendant No.1.

10. On the one hand, Defendant No.1 claimed to have countermanded the payment on the count that there was a cloud over the title of the Plaintiffs as the brother of the Plaintiffs had instituted a suit in the year 2018. On the other hand, Defendant No.1 executed the Sale Deed in favour of Defendant

Nos.2 to 7 in respect of a portion of the suit property (1B) in the year 2021. This conduct on the part of Defendant No.1, prima facie, demolishes the defence of Defendant No.1 that the payment was countermanded as there was a cloud over the title of the Plaintiffs. Conversely, the aforesaid conduct and act of Defendant No.1 gives heft to the claim of the Plaintiffs that the intention of the Defendant No.1 was dishonest since inception and the Plaintiffs were made to enter into a contract for sale by making promise of payment of consideration by way of cheques, without any intention of performing the said promise.

11. In this view of the matter, the Courts below cannot be said to have committed any error in exercising discretion to restrain Defendant Nos.1 to 7 from causing obstruction to the possession of the Plaintiffs over the suit property and restraining Defendant Nos.1 to 7 from creating further third party interest in the suit property. No interference is, thus, warranted in exercise of supervisory jurisdiction.

12. The Writ Petition stands dismissed.

13. It is clarified that the observations made hereinabove are confined to the determination of the legality, propriety and correctness of the orders impugned in this Petition and the Courts below shall not be influenced by any of the observations made in this order while deciding any interlocutory application or finally adjudicating the suit.

14. The trial Court is requested to decide Special Civil Suit No.956 of 2023 as expeditiously as possible.

(N.J.JAMADAR, J.)