IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7015 OF 2025
(FOR STAY AND INJUNCTION)
IN
FIRST APPEAL (ST) NO. 11448 OF 2025

Pritam Genubhau Shende And Ors. ...Applicants/Appellants
Versus
Pramod Shantaram Zagade ...Respondent

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Mr. R.D. Suryawanshi i/b. Mr. Rakesh Patil, Advocate for Applicants/Appellants.
Mr. Vishwanath Patil a/w. Mr. Harshwardhan Karande, Advocate for sole Respondent.

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CORAM : M.M. SATHAYE, J.
DATE : 25th JULY, 2025

P.C. :

1. Heard counsel for Applicants and learned counsel for the Respondent. Applicants are plaintiff and Respondent is defendant.

2. This application is filed by the Applicants/original Plaintiffs seeking various prayers. First prayer is for stay to dismissal of the suit, which is meaningless and therefore not considered. Second prayer is for interim injunction restraining the Respondent from obstructing peaceful possession of the Applicants over the suit land, which possession is held to be in favour of the Applicants. Further prayer is made for restraining the Respondent from selling, alienating or disposing of the suit land.

3. Few facts necessary for disposal of this application, are as

under. The Applicants filed the said suit seeking cancellation of the agreement to sell, sale deed and Power of Attorney executed in favour of the Respondent. It is the case of the Applicants that Applicant No.1 was in need of money for development of business and therefore, when he inquired with Respondent who is his childhood friend, the Respondent agreed to lend Rs.95,00,000/- to him for 18 months on condition that Applicant No.1 shall repay extra Rs.5,00,000/-. It is contended that the Respondent asked Applicant No.1 to mortgage the suit land as security for repayment of loan. Applicant No.1 agreed and the Respondent informed Applicant No.1 that document is ready. On going through the document prepared by the Respondent, it was found that the Respondent had prepared agreement to sell instead of deed of mortgage. The Applicants initially resisted. However, since Applicant No.1 was in need of money, and the Respondent agreed to delete few clauses of the agreement of sale, document of agreement to sell was executed. It is contended that the Applicants executed Power of Attorney unwillingly. According to the Applicants they have repaid complete amount of Rs.95,00,000/-. However, the Respondent avoided to cancel the agreement to sell and Power of Attorney and thereafter went to London for staying. In the meantime, Applicant No.1 met with an accident and was bed ridden and the Respondent executed sale deed in respect of the suit land on the strength of Power of Attorney executed in his favour.

4. Defence of the Respondent is that the Applicants had agreed to sell the suit land because they were in need of money in 2013. The

Respondent agreed to purchase the land for Rs.1 crore. The Respondent paid Rs.95,00,000/- through 5 cheques and it was decided to pay remaining amount to the Applicants at the time of execution of sale deed. In the year 2014, the Respondent was in need of money for purchasing a flat at Pune and this time, Applicant No.1 lent Rs.80 lakhs to the Respondent through cheques and out of said amount the Respondent has repaid Rs.9,50,000/- to Applicant No.1 through cheque. That the Respondent has transferred various amounts in the account of Applicant No.1 as well as one third person Sunil Divekar (Rs. 2 Lakh) and Top Tech Ltd., a firm owned by Mr. Tejprakash H. Butada (Rs. 51 Lakh) and over all the Respondent has given total Rs.1,22,50,000/- to Applicant No.1. It is contended that since the Applicants were not completing the transaction, and executing the sale deed, the Respondent tried to contact them from time to time, who said that he can get sale deed executed as he is holding Power of Attorney. Accordingly on 25.06.2019, the Respondent has got sale deed executed in his favour. It is contended that if all the calculations are made, finally out of Rs.1,22,50,000/-, Rs.37,50,000/- is yet due and payable to Respondent from the Applicants. It is seen from that the record that the Respondent along with written statement had filed counter claim for recovery of Rs.37,50,000/-, however since court fees were not paid, counter claim is not considered.

5. The suit has been dismissed by finding that the Applicants could not prove the nature of the transaction as loan and document has been found as sale deed. However, the Applicants have been

found in possession of the suit land under Issue No.5.

6. Learned counsel for the Applicants submitted that though the transaction is ostensibly that of sale deed, considering the pleadings of both the sides, it is clear that parties were engaged in multiple financial transactions. He submitted that it is necessary to restrain the Respondent from selling the suit property. Learned counsel for the Respondent on the other hand submitted that the Applicants have failed to prove their case, notwithstanding the defence raised by the Respondent. He submitted that the counter claim is not even pressed and therefore, the subsequent transaction of 2014 about Applicants lending money to the Respondent should not to be considered while considering the application. He further submitted that evidence on record indicates that the Applicants did not take any steps to cancel the Power of Attorney in favour of Respondent and therefore, the same has been used to execute sale deed in favour of the Respondent.

7. I have considered the submissions and record produced at the stage of this application. The intention of the parties will be finally adjudicated at the stage of final hearing of this appeal, as this is a substantive first appeal under Section 96 of Civil Procedure Code, 1908, where the Court is expected to re-appreciate the evidence and give its finding as a last fact finding Court. Glaring aspects of the matter needs consideration at this interim stage.

8. The agreement to sell executed between the parties indicates that clause 5 of the said registered document was clearly scored out with cross signatures and therefore, there is no clause in existence

which give rights to the Respondent, as proposed purchaser to get the sale deed executed in his favour or a person nominated by him. In the absence of such clause in the agreement of sale itself, prima facie in my view, the clause in the Power of Attorney to execute sale deed, cannot be considered independently. The sale deed executed by the Respondent is a self serving document where same party (Respondent) has signed as purchaser and seller as Power of Attorney of the seller. Apparently there was no reason for the Respondent to wait till 2019 to get the sale deed executed when the transaction of 2013 was a transaction of out and out sale and the amount of Rs.95,00,000/- were already paid by the Respondent for alleged purchase of the suit land. The agreement to sell is the basis of the entire transaction of which clause 10 indicates that the sale deed was to be executed after payment of remaining consideration of Rs.5,00,000/-. This completion of transaction has not taken place and according to the Respondent in the interregnum in the year 2014, immediately within one year of the original transaction, the Respondent felt the need of money for purchase of a flat. The Respondent in his wisdom or advisedly raised the defence of an independent transaction in answer to transaction in question. In that defence, the Respondent has stated that certain amount was lent to him and for its repayment the Respondent has not only paid to the Applicants but third persons also. The defence of the Respondent that he has repaid the amount to Applicant No.1 from funds advanced by Applicant No.1 himself, is absurd and unbelievable, even at prima facie stage. If at all, the subsequent transaction of money lent by the Applicants to Respondent was a defence to suggest a set-off, it is not explained by the Respondent why the counter claim was not pressed.

9. In the aforesaid facts and circumstances, the picture emerging before the Court is that neither the original transaction of sale deed nor the subsequent transaction claimed by the Respondent were real transactions and parties only engaged in give and take of money, which was couched in a document such as agreement to sell, power of attorney with payments each other and to third persons. In that view of the matter, it is not possible to hold clearly in favour of either party at interim stage and the equities will have to be balanced.

10. Considering that the Respondent himself has came with the case that out of Rs.1,22,50,000/- given by the Respondent to Applicants, Rs.37,50,000/- is yet due and payable to him and further considering the fact that the sale deed is executed without a clause permitting sale of the property, in my view, equities can be balanced by passing following order, which I accordingly pass.

(A) The Applicant No.1 to deposit in this Court an amount of Rs.19,00,000/- (about half of the dues claimed by Respondent) within a period of 4 weeks from today.

(B) Upon such deposit being made by the Applicant within stipulated time, the Respondent shall be restrained from selling / creating third party interest in the suit land.

(C) The deposited amount shall be invested initially for a period of 3 year in any nationalized bank and thereafter renewed periodically from time to time as per prevalent practice. This amount will be subject to final outcome of the appeal.

(D) So far as prayer for interim injunction not to disturb possession is concerned, it must be borne in mind that though the Applicants are found to be in possession, rest of the case challenging documents in favour of Respondent is disbelieved by the Trial Court. Therefore question about injunction 'not to disturb possession' will have to be considered along with question of 'income from suit land owned by Respondent being enjoyed by the Applicants'. Therefore liberty is granted to parties to agitate the said aspect by a separate application. Rival contentions in that regard are kept open.

(E) Interim application is disposed of in above terms.

11. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)