



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL AGAINST ORDER NO.25 OF 2025

APPELLANTS

(Original Plaintiff)
On RA

- :-** 1) Shahkar Enterprises
Through its Proprietor Prajwal Sanjay
Shahkar, Aged: 22 years, Occu: Business,
R/o: Mahendra Colony, Amravati, Tq. And
Dist. Amravati.
- 2) Rahul Manoharrao Deshmukh,
Aged: 40 years, Occu: Business, R/o:
Mahendra Colony, Amravati, Tq. And
Dist. Amravati.
- 3) Ankalesh Ram Gurbani
Aged: 47 years, Occu: Business, R/o:
Vivekanand ColonyColony, Amravati, Tq.
and Dist Amravati.

..VERSUS..

RESPONDENTS :-

(Original defendants)
On RA

- 1) Dr. Deodatta S. Bodhankar, Aged: 74
Years, occu: Retired, R/o: Ambadevi Road,
Amravati, Tq. And Dist: Amravati.
- 2) Radha Shrihari Builders and Developers
LLP Through its Partners.
- A. Smt Geeta Pravinchandra Khatri,
Aged : 65 Years, Occu: Business
- B. Jayant PravinchandraKhatri, Aged 40
Years, Occu: business
- C. Sau Sandhya Jayant Khatri, Aged 37 years,
occu: Business, All r/o: Office Address at
Flat No.303, Sai Spandan Apartment, Opp

to ICAI Bhavan, Saturna, Amravati Tq.
And Dist Amravati, Maharashtra 444607.

Mr. Akshay Sudame, Advocate for Appellants.
Mr. S.O. Ahmed, Advocate for Respondent No.1.
Mr. S.S. Sitani, Advocate for Respondent Nos.2(A to C).

CORAM : ROHIT W. JOSHI, J.

DATE : 08/12/2025

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the respective parties.

2. The present Appeal Against Order is preferred against the order dated 03.10.2025, passed by the learned 18th Jt. Civil Judge Senior Division and Additional Chief Judicial Magistrate, Amravati, on application at Exh.5 in Special Civil Suit No.186 of 2024, whereby application for grant of temporary injunction filed by the present appellants, who are the original plaintiffs, came to be rejected. The appellants have filed a suit for specific performance of contract dated 14.02.2022. The appellants had entered into an agreement of sale with respondent No.1 on the said date, *inter alia* agreeing to purchase the suit property for a total consideration of Rs.4,51,00,000/-, out of which, according to the plaintiffs, part

consideration of Rs.1,12,11,000/- is paid by the appellants to the respondent No.1. The respondent No.1 thereafter sold the suit property to the respondent No.2 vide sale deed dated 28.03.2024 and has handed over possession thereof to the respondent No.2. The suit for specific performance of contract is filed on 10.05.2024 i.e. after execution and registration of the sale deed in favour of the respondent No.2.

3. The contention of Mr. Sudame, is that under clause-4 of the agreement, defendant No.1 had permitted the appellants to undertake development work on the suit property prior to execution of the sale deed, which indicates that the plaintiffs were infact in physical possession of the suit property. I have perused clause-4 of the agreement. The said clause does not specifically state that the appellants/plaintiffs is placed in physical possession of the suit property, it only records that permission is granted to the plaintiffs to carry out the development work prior to execution of the sale deed in their favour.

4. Admittedly, the agreement of sale in faovur of the appellants is not a registered document and *prima facie* it appears that and the appellants were also not placed in possession of the suit property under the said agreement. The appellants therefore cannot

claim that the respondent No.2 had constructive notice of the agreement in their favour while purchasing the suit property.

5. The learned trial Court has rejected the application for grant of temporary injunction, observing that the appellants/plaintiffs had failed to get the sale transaction completed within the period stipulated under the agreement, inasmuch as the appellants/plaintiffs did not make payment of the entire sale consideration in order to get the sale deed executed in their favour on or before the stipulated date i.e. 15.01.2023. The learned trial Court has also observed that it was the defendants who had initially issued a notice to the plaintiffs calling upon them to get the sale deed executed by paying the balance sale consideration.

6. The learned trial Court has also found that the explanation offered by the appellants that the sale transaction could not be completed within the stipulated period because measurement of the suit property was not got done by the vendor/defendant No.1 is *prima facie* not acceptable, in view of a document titled as “Token Chitthi” dated 03.01.2022, executed by and between plaintiffs and defendant No.1, which reflected that measurement of the suit property was in fact done way back on 13.10.2016.

7. The record does indicate failure on the part of plaintiffs

in making payment of entire sale consideration within the stipulated period. It also appears from record that defendant No.1 had served notice to plaintiffs to complete the transaction as per agreement. Despite this, the plaintiffs did not act positively.

8. The view taken by the learned trial Court is a possible view. This Court while hearing the appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908, cannot substitute the discretion exercised by the learned trial Court with its own discretion, when the relevant factors have been taken into consideration while exercising of such discretion.

9. More importantly, there is nothing to indicate that the defendant No.2, who is presently the owner of the suit property, was aware or even had constructive notice of the prior agreement of sale. The current situation of the suit property indicates that construction over the suit property initiated by the defendant No.2 is at a very advanced stage.

10. In view of the above, no case for interference is made out. Appeal against order stands **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)