IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1088 OF 2019
WITH
CIVIL APPLICATION NO. 1232 OF 2019
IN
APPEAL FROM ORDER NO. 1088 OF 2019

1)	M/s. Aswani Properties Having office at S.P. Heights, 2nd Floor, Kasarwadi, Pune -34 Through its Partner Shrichan Shamandas Aswani Age : 53 years, Occ. : Business, R/o.Sham Bhavan, Plot No. 140, Pimpri, Pune – 17.	} } } } } } } }	
2)	Shrichand Shamandas Aswani Age : 53 years, Occ. : Business, R/o.Sham Bhavan, Plot No. 140, Pimpri, Pune – 17.	} } } }	…. Appellants (Org. Defendants)

Versus

1)	Sanjay Pandurang Kalate Age : 50 years, Occ.: Business, R/o. Survey No. 277, Wakad, Tal. Mulshi, District Pune.	} } } } }	
2)	Mohan Pandurang Kalate Age : 48 years, Occ.: Business, R/o. Survey No. 277, Wakad, Tal. Mulshi, District Pune.	} } } }	…. Respondents (Org. Plaintiffs)

Adv. Mayur Kaandeparkar a/w Adv. Minal Chandnani, for Appellants.

Adv. Sandeep S. Salunkhe, for Respondent No.1.

Adv. Hitesh Vyas a/w Adv. Rasik Raut, for Respondent No.2.

CORAM : PRAFULLA S. KHUBALKAR

DATE : 5TH OCTOBER 2026

P. C. :-

1. Heard Advocate Mayur Khandeparkar for Appellants, Advocate Sandeep Salunkhe for Respondent No.1 and Advocate Hitesh Vyas for Respondent No.2.

2. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

3. By this appeal under Order XLIII Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 (Hereinafter referred as **"CPC"**) the appellants have challenged order dated 30.04.2019 passed by the Trial Court on an application for temporary injunction (at Exh.5) in Special Civil Suit No. 1552 of 2018 by which temporary injunction is granted to restrain the defendants in suit from creating third party interest in respect of the suit properties.

4. The appellants herein are the Original Defendants in suit bearing Special Civil Suit No. 1552 of 2018 which is filed by the respondents herein seeking a relief of cancellation of Sale

Deed dated 19.06.2017 with respect to the suit property. The parties are hereinafter referred to as 'plaintiffs' or 'defendants', according to their status in the suit.

5. The plaintiffs have averred in the suit that the suit property described in the plaint was sold by the plaintiffs to the defendants for a consideration of Rs. 8,64,00,000/- (Rupees Eight Crores Sixty Four Lakhs only), which amount was paid by NEFT and various cheques. The plaintiff's case is that although the Sale Deed dated 19.06.2017 was executed and registered in favour of the defendants, there was non-payment of entire consideration amount since, the defendants had paid only an amount of Rs. 4,13,85,000/- (Rupees Four Crores Thirteen Lakhs Eighty Five Thousands only) out of the entire consideration and for non-payment of balance consideration, the Sale Deed deserves to be cancelled. In the suit, the plaintiffs also filed a separate application for temporary injunction (Exh.5) by which the plaintiffs prayed for temporary injunction to restrain the defendants or anybody on their behalf from creating any kind of third party interest with respect to the suit property. The defendants appeared in the suit and filed their

reply to the application for temporary injunction. The Trial Court decided the application by its order dated 30th April 2019 by which the application came to be allowed thereby the defendants were restrained from creating third party interest with respect to the suit property. Feeling aggrieved by this order, the defendants have filed the instant appeal.

6. Advocate Khandeparkar, learned counsel for the appellants vehemently submitted that the impugned order is unsustainable in view of the fact that the suit itself is not maintainable. He submitted that the plaintiffs have sought for cancellation of Sale Deed on the ground of alleged non-payment of part of the sale consideration. He submitted that the alleged non-payment of part of sale consideration can not be a ground for cancellation of Sale Deed and the plaintiffs stands in the category of the unpaid seller and therefore have got other remedies in law for recovery of the balance consideration. He therefore submitted that the plaintiff's suit itself is vexatious and meritless as it does not disclose any right to sue. By relying on the judgment of the Hon'ble Supreme Court in the matter of *Dahiben Versus Arvindbhai Kalyanji Bhanushali (Gajara) Dead*

Through Legal Representatives And Others reported at *(2020) 7 SCC 366,* he submitted that on execution and registration of Sale Deed the title had passed on the transferee and the non-payment of part of sale price would not affect the validity of the sale. He therefore, submitted that in the instant case since Sale Deed is executed there is no question of any injunction on the rights of the purchaser with regard to creating third party interest.

7. In support of his submissions he also placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Raziya Begum And Ors. Versus Nafisa Begum Abdul Hamid And Ors.* reported at *2026 SCC Online Supreme Court 1511* in which the position of law has laid down in the matter of Dahiben (referred supra) is reiterated.

8. As against this, Advocate Sandeep Salunkhe, learned counsel for Respondent No.1 and Advocate Hitesh Vyas learned counsel for Respondent No.2 vehemently opposed the appeal and advanced their submissions to justify the impugned order. They submitted that undisputedly the defendants have not paid the entire sale consideration and by not paying the balance

consideration the defendants have committed the acts of cheating. They submitted that the plaintiffs have not transferred the possession of the suit property and the Sale Deed deserves to be cancelled on account of non-payment of entire sale consideration. Apart from this, by inviting attention to the public notice dated 04.03.2019 published in daily 'Prabhat', it is submitted that plaintiffs have attempted to sale the suit property during the pendency of the suit and therefore there was an imminent need to grant temporary injunction.

9. In the backdrop of above submissions, rival contentions falls for my consideration.

10. It has to be noted that plaintiff's suit is for cancellation of Sale Deed dated 19.06.2017. There is no dispute either in reply to the temporary injunction application or in any of the averments that entire sale consideration of the suit property is not paid. The defendants have attempted to raise the defence that the plaintiffs failed to disclose pendency of a separate civil suit bearing Regular Civil Suit No. 1669 of 2009 filed by Tanaji Laxman Bhujbal and others with respect to the suit property which has justified their act of withholding balance

consideration amount of Rs. 3,74,00,000/- (Rupees Three Crore Seventy Four Lakhs only). As such, it is clear that there is no dispute about the contentions of the plaintiff that the entire sale consideration is not paid and the substantial amount remains unpaid even though the Sale Deed is executed by the plaintiffs. Thus, it is clear that the plaintiffs primary ground for seeking cancellation of Sale Deed is non-payment of entire sale consideration.

11. It is relevant to note that the defendants have not filed any application under Order VII Rule 11 of the CPC seeking rejection of plaint by raising any ground of non-maintainability of the suit on any count. As such, the plaintiffs application for temporary injunction fell for consideration before the Trial Court on the strength of contentions raised by the plaintiffs demonstrating need for temporary injunction.

12. It has to be noted that the plaintiffs have filed the application for temporary injunction (Exh.5) by categorically pointing out the emergent need to grant temporary injunction in view of public notice dated 04.03.2019 which shows that the defendants had decided to sale the suit property and had called

for objections from the public at large with respect to existence of any rights over the suit property. In view of this public notice, it becomes clear that during pendency of the suit, the defendants were attempting to create third party interest in the suit property. Thus, in view of the case put up by the plaintiffs in the application for temporary injunction, they have pointed out a *prima facie* case seeking temporary injunction as prayed in their application. The application came to be decided by the Trial Court after giving due consideration to the factors for grant of temporary injunction and having found that the plaintiffs have demonstrated fulfillment of all the factors, the order of temporary injunction is passed.

13. As regards the objection raised by the appellants regarding the maintainability of the suit, it has to be noted that the appellants (defendants in the suit) have not raised any objection to maintainability of the suit in their reply to the temporary injunction application. Crucial to note, the defendants have not even filed any application seeking rejection of plaint under Order VII Rule 11 of CPC and as such, the contentions about maintainability of suit have been levelled for

the first time in the instant appeal. Although, it is contended by the learned counsel for appellants that the issue of maintainability of the suit goes to the root of the matter, however, it has to be noted that the defendants have never raised such a defence and as such the same stood acquiesced at the stage of consideration of application for temporary injunction. The position of law as laid down in the matter of Dahiben (referred supra) and so also in the matter of Raziya Begum (referred supra) is not disputed. Pertinent to note, in Dahiben (referred supra), the contentions were raised in application undr Order VII Rule 11 application and in Razia Begum (referred supra), the issue was considered after decision in Second Appeal. However, it has to be noted that the defendants had never raised any issue of maintainability of the suit and as such the appellants are not entitled to seek any advantage of position of law as laid down in these judgments.

14. Needless to state the defendants are entitled to raise their defence in that regard by appropriate applications. However, in the instant appeal, at this stage, while considering issue of challenge to the order passed in temporary injunction

application, I am of the considered opinion that the Trial Court has rightly decided the application for temporary injunction on the basis of material available before it.

15. On perusal of the impugned order, it becomes clear that the Trial Court has given due consideration to all the factual and legal aspects and has recorded proper reasoning. I do not find any perversity in the reasoning recorded by the Trial Court warranting interference on any count.

16. In view of the above, I do not find any need to interfere in the impugned order. Resultantly, the instant appeal is dismissed with no order as to costs.

17. Accordingly, pending Civil Application also stands disposed of.

(PRAFULLA S. KHUBALKAR, J.)

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