

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.767 OF 2024
WITH
INTERIM APPLICATION NO.14418 OF 2024
(For Stay)
IN
APPEAL FROM ORDER NO.767 OF 2024

1 Rahul Mulji Patel,
Age 41 years, Occ: business and
Agriculture residing at Plot No.607
Pokar Niwas, near Bhel Chowk
Sindhu Nagar, Sector 25, Nigadi
Pradhikaran, Pune 411 044

2 Shri Pravin Gulabrao Mhaske
Age 50 years, Occ: business and
Agriculture residing at Survey No.83
Pooja building, Alandi Road,
Mhaske Vasti, Dighi, Camp, Kalas
Pune 411 015

...Appellant
(Org.Plaintiffs)

Versus

1 Shri Nanasaheb Chindu Vidhate,
Age 65 years, Occ: Agriculture,

2 Shri Bhushan Nanasaheb Vidhate,
Age 34 years, Occ: Agriculture,

3 Shri Dinesh Nanasaheb Vidhate,
Age 31 years, Occ: Agriculture,

4 Late Baburao Chindhu Vidhate,
Through his legal representatives

4A Shri Vishal Baburao Vidhate,
Age 36 years, Occ: Agriculture,

4B Shri Rohit Baburao Vidhate,
Age 31 years, Occ: Agriculture,
Nos. 1 and 2 residing at Flat No.

D-101, Irin Tower, Aloma County
Vidhate Vasti, Baner, Pune 411045

5 Shri Yogesh Nagraj Jain,
Age 40 years, Occ: business,
Residing at Sector No.7, Plot No.310
Near BHEL Chowk, Nigadi
Pradhikaran, Pune 411 044

6 Shri Surendra Bhimsen Agarwal,
Age 46 years, Occ: business,
Residing at Sector No.23, Isen Villa
Near Hotel Vrindavan, Pradhikaran
Nigadi, Pune 411 044.

...Respondents
(Org.Defendants)

*Mr. S. S. Patwardhan i/b Ms. Mrinal Ashwin Shelar for the
Appellants/Applicants
Mr. Rajshekhar Govilkar, Sr. Advocate a/w Mr. Mahesh Vishwakarma i/b
Mr. Chandrakant Nanekar and Ms. Gauri Bandre for the Respondent
Nos. 1 to 6*

CORAM : SHARMILA U. DESHMUKH, J.
DATE : JUNE 9, 2026

ORAL JUDGMENT :

1. The present Appeal challenges the order dated 9th July 2024 passed by the 5th Joint Civil Judge, Senior Division, Pune, below Exhibit 5 in Special Civil Suit No.2438 of 2023, rejecting the Plaintiffs' application seeking injunction against creating third party rights in respect of suit property.
2. Special Civil Suit No. 2438 of 2023 was filed seeking specific performance of Agreement for Sale dated 7th January 2022, executed between the Plaintiffs and the predecessors of the Respondents, who

were the original vendors of the suit property. The Trial Court, by the impugned order, declined to grant interim injunction. It is further considered the terms and conditions of the Agreement for Sale of 7th January 2022, which provided for a period of nine months for the purpose of completion of the transaction, and as there was non-compliance with the obligations by the Plaintiffs, held that the Plaintiffs are not entitled to interim relief. It further considered that on 6th of August 2023, there is a Sale Deed executed in respect of the subject property with the Defendant Nos. 3 and 4. It further noted that in event the Plaintiffs succeed in the proceedings, the decree would be binding on the subject property.

3. Mr. Patwardhan, learned counsel appearing for the Appellants, has taken this Court in detail through the terms and conditions of the Agreement for Sale dated 7th January 2022, and would point out that the consideration was to be computed on the basis of the area at the rate of Rs. 12 lakhs per guntha. He further submits that the obligation was upon the vendors to carry out the survey for calculating the exact area for the purpose of computation of payment of consideration. He further submits that the said property was not surveyed, and therefore, there was no occasion for the Plaintiffs to comply with their obligations of making payment of the balance consideration. He would further submit that the original vendors were not keeping good health,

and in fact, the Defendant No. 2 expired on 13th of October 2022, and the Defendant No. 1 expired subsequently and by reason of illness of the vendors, the compliance with the terms of the Agreement for Sale, was delayed. He submits that subsequently, by notice dated 6th June 2023, the legal heirs were called upon to specifically perform the Agreement for Sale, and despite receipt of the said notice, on 6th August 2023, they have executed a Sale Deed in favour of Defendant Nos. 3 and 4.

4. He would further submit that the time of nine months was not of essence, as it is well settled that in case of transfer of immovable property, time is not of essence. He submits that the Plaintiffs have parted with valuable consideration, which has not been refunded by the Defendants. He submits that the balance of convenience is in favour of the Plaintiffs, considering the transfer of substantial consideration, and the fact that the survey was not carried out by the vendors, constitutes breach of obligation by the vendors, and *prima facie* case has been made out for grant of interim injunction.

5. *Per contra*, Mr. Govilkar, learned Senior Advocate appearing for the Respondents, points out that the parties intended to make time the essence of the contract by providing that in event, the transaction is not completed within a period of nine months, the vendors were entitled to terminate the agreement. He would further point out that

for a period of nine months, no steps were taken by the Plaintiffs for the purpose of completion of the sale, and it is only on 6th June 2023 that the notice was issued for specific performance. He submits that there is total inaction on part of the Plaintiff, and *prima facie* case has not been made out. He submits that balance of convenience is not in favour of the Plaintiffs, as in the meantime, there is a registered sale executed in favour of Defendant Nos. 3 and 4. He submits that the Trial Court has rightly considered the inaction on part of the Defendant, and also non-compliance of the conditions of the Agreement for Sale and rejected the application.

6. I have considered the submissions and perused the records.

7. The suit seeks specific performance of an Agreement for Sale of 7th January 2022, and in order to seek an interim relief of injunction, the Plaintiffs have to make out a *prima facie* case of entitlement to the specific relief of the Agreement for Sale. The purpose of grant of interim relief in case of suits involving immovable property is to preserve the *status quo* of the property and the considerations which apply are, *prima facie* case, balance of convenience, and irreparable loss and injury.

8. In a suit for specific performance, the *prima facie* case to be made out by the Plaintiffs' is compliance of their obligations under the Agreement for Sale, a breach by the Defendants, as well as continuous

readiness and willingness to stand with the contract. If the Agreement for Sale is perused, the parties had agreed that the basis for computation of consideration is Rs. 12 lakhs per guntha, and for determination of final consideration a survey to be carried out by the vendors. Clause 9 of the Agreement for Sale provides that the expenses for the purpose of survey is to be borne by the Plaintiffs. It is further agreed that within a period of nine months, the entire transaction is to be completed, failing which the vendors would be entitled to terminate the transaction and refund the money.

9. Though it is sought to be contended by Mr. Patwardhan that time is not of essence in the case of transfer of immovable property, the intention of the parties to the contract is clear from the terms and conditions that the parties intended to make time the essence of the contract, as it not only specifies the period of nine months for the purpose of completion of the transaction but also provides for the consequence of termination upon the expiry of period of nine months. Admittedly, the period of nine months expired on 7th October 2022, without any steps being taken by the Plaintiffs for the purpose of completion of the sale. As one of the conditions was payment of expenses for the purpose of carrying out survey, it was incumbent on the Plaintiffs to call upon the vendors to carry out the survey and show its readiness and willingness to pay the expenses of the said survey.

The Plaintiffs were well aware that the sale transaction had to be completed within a period of nine months, which also included survey to be carried out for determining final purchase price. There is complete inaction on the part of the Plaintiffs to comply with their obligations of payment of the survey charges or for completion of the transaction within the period of nine months. The explanation tendered is that the compliance of the obligation was delayed by reason of the vendors not keeping well. Considering that time was of essence of the contract, the said explanation cannot be accepted. There is not even a single notice issued by the Plaintiffs subsequent to the execution of the Agreement for Sale in the year 2022, till 6th June 2023. The Trial Court has rightly considered that the Plaintiffs have not complied with their obligations within the period of nine months, and that subsequently, on 6th August 2023, a Sale Deed has been executed in favour of the Defendant Nos. 3 and 4.

10. As there is *prima facie* non-compliance of the obligations by the Plaintiffs, the Plaintiffs have failed to make out a *prima facie* case. The suit property being the subject of a subsequent transfer on 6th August 2023, the balance of convenience tilts in favour of the Defendants. It is not shown whether any irreparable loss would be caused to the Plaintiffs, as, in event the Plaintiffs succeed in the suit, the decree would also bind the subsequent transferee.

11. In light of the above discussion, there is no perversity demonstrated in the impugned order dated 9th July 2023. Resultantly, the Appeal fails and stands dismissed.

12. It is made clear that the observations of this Court are only in the context of considering the validity of the order of 9th July 2024, and the Trial Court is directed to decide the suit on its own merits in accordance with law.

13. The interim application does not survive for consideration and stands disposed of accordingly.

[SHARMILA U. DESHMUKH, J.]