

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/APPEAL FROM ORDER NO. 73 of 2022**

**With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/APPEAL FROM ORDER NO. 73 of 2022**

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**CHANDRA DARSHAN DEVELOPERS THROUGH PARTNER
Versus
HIRALAL GOPALBHAI**

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Appearance:

MR. ASIM PANDYA, SR. ADVOCATE WITH AADITYA D BHATT(8580) for
the Appellant(s) No. 1,2,3
MR. R.R. MARSHAL, SR. ADVOCATE WITH MR DAIFRAZ
HAVEWALLA(3982) for the Respondent(s) No. 1

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CORAM: HONOURABLE DR. JUSTICE A. P. THAKER

Date : 17/03/2022

ORAL ORDER

1. With the joint consent of the learned Senior Counsels and learned advocates appearing for the parties, the Appeal has been heard finally at the stage of admission.
2. Being aggrieved and dissatisfied with the impugned order dated 17.2.2022 passed below Exh-5 in Special Civil Suit No. 67 of 2019 passed by the learned Principal Senior Civil Judge and Additional Chief Judicial Magistrate, Kathor District: Surat whereby the defendants have been restrained to sale, transfer, mortgage or pass any interest to third party and to maintain status-quo as far as unsold plots from a total 447 Plots in the suit property situated at Village: Kamrej, Taluka: Kamrej and District: Surat, the original defendants have preferred this Appeal from Order

under Order 43 Rule 1 (r) of Code of Civil Procedure. The appellants are the original defendants and the respondent is the original plaintiff before the trial Court. For brevity and convenience, the parties are referred to herein as per their status before the trial Court.

3. The essential brief facts as emerged from the record are as under:

3.1 The plaintiff had preferred the aforesaid suit for cancellation of the sale-deed on the ground of non-payment of consideration as well as for declaration of injunction pertaining to land in question i.e. Revenue Survey No. 340 old block No. 320/A, of old tenure land having area of 39242 sq. mtrs especially Plot NO. 320/A/1 to block No. 320/A/545. According to the plaintiff, there was sale-deed registered between the parties for the land in question for consideration of Rs.11, 53,27,800/- and the same was registered with Kamrej Sub-Registrar, Surat. The plaintiff has alleged that he has not received the entire sale consideration and out of the said sale transaction, Rs. 6 Crore have already been returned to the defendants as the defendants has some financial difficulties at the relevant time. It is also alleged that in addition to the sale transaction, earlier there was a *Sauda Chithhi* dated 25.12.2014 wherein the price was fixed for the land in question at Rs. 34 Crores and out of it only Rs. 5.50 Crores have been received and the remaining amount has not been paid by the defendants. It is also contended by the plaintiff

that since entire consideration amount was not paid, the title in the property has not been passed in favour of the defendants. It is also contended that fraud has been committed by the defendant by not paying the amount. He has also submitted that out of the cheques referred to in the said sale-deed, Rs. 6 Crores was returned back to the defendants. It is also contended that the defendant is trying to sell out the property to third party and thereby they are trying to defraud the public at large and trying to sell-out the property and trying to create encumbrances upon the property. Therefore, the plaintiff is constrained to file the present Suit for declaration of injunction as well as for cancellation of sale-deed and for preventing the defendants from dealing with the property in question in any manner. The plaintiff has also, alternatively, prayed for directing the defendants to pay the remaining amount of consideration of Rs.28,46,72,200/- along with interest. Along with the Plaint, the plaintiff has also moved an application for interim injunction under Order 39 Rule 1 & 2 read with Section 151 of CPC.

- 3.2 The defendants have resisted the suit and the interim injunction application and had filed composite reply of plaint as well as of Exh-5, at Exh-15. The defendant side has accepted that there was a sale-deed executed between the parties. However, it has denied the contention of the plaintiff regarding execution of Sauda Chithhi dated 25.12.2014. It is contended by the defendants that after receiving the entire consideration amount, the plaintiff has

executed sale deed in relation to the land in question on 8.1.2016. It is submitted that when the entire consideration amount has been paid to the plaintiff, there is no question of cancellation of sale-deed. It is also contended that the plaintiff is trying to mix the other transactions entered into between the parties with the present sale transaction. It is contended that the intention of the plaintiff is only to extract more money from the defendant. It is also contended that after the sale transaction, the defendants have already developed the land and has plan of creation of "Chandra Darshan Residency-2" and that fact is in knowledge of the plaintiff. The defendant has also contended that there are already 447 plots made and till dated 175 parcel have already been sold to the purchaser and that fact is also known to the plaintiff. It is also contended that no amount is unpaid to the plaintiff under the sale transaction. It has also raised point of limitation. It is stated that the plaintiff has no right, title against the land in question as he has already parted with the possession and has received the entire consideration for the sale transaction. It is also contended that third party interest are already created in the land and, therefore, all the three ingredients of granting interim relief under Order 39 Rule 1 & 2 are not in favour of the plaintiff and are rather in favour of the defendants. On all these grounds, it has prayed to dismiss the interim injunction application as well as the Suit.

4. It appears that both the sides have filed relevant

documentary evidence before the trial Court. The trial Court after perusing the pleadings of the parties and considering the documentary evidence and after hearing both the sides, has ultimately passed the impugned order restraining the defendants from dealing with the rest of the unsold plots and to maintain status-quo thereto till the disposal of the Suit.

5. Heard Mr. Asim Pandya, learned Senior Counsel assisted by Mr. Aaditya Bhatt, learned advocate for the appellants and Mr. R.R. Marshal, learned Senior Counsel assisted by Mr. Daifraz Havewalla, learned advocate for the respondent. Perused the material placed on record and the impugned order of the trial Court and the decisions relied upon.
6. Mr. Asim Pandya, learned Senior Counsel for the defendants has vehemently submitted that there was a sale transaction entered into between the parties and the land in question was sold to the defendants by the plaintiff by way of sale deed dated 8.1.2016 for consideration of more than 11 Crores. He has also submitted that certain amount of consideration was paid in cash and the rest of the amount came to be paid by way of cheques. He has also submitted that the plaintiff has already encashed the cheques and he has received the consideration. Mr. Pandya submitted that at the time of execution of the sale deed, when the possession of the land has already been handed over to the defendants and the defendants have developed the same and has got mortgaged the said land for financial

assistance. He has also submitted that Plotting has already been made in the Suit land and 175 plots are already sold to the third party. He has submitted that the plaintiff has knowledge of all these facts. Mr. Pandya, learned Senior Counsel has submitted that the plaintiff has relied upon the Souda Chithhi dated 25.12.2014 alleging that the price was of Rs. 34 Crores and there was a time schedule fixed for payment of installment. According to Mr. Pandya, learned Senior Counsel, that there is a manipulation made in the Souda Chithhi with a view to see that the suit is in the limitation period as otherwise, the suit would be barred by law of limitation if it is considered from the date of execution of the sale-deed.

- 6.1 Mr. Pandya, learned Senior Counsel has also vehemently submitted that the plaintiff is relying on the said *Souda Chithhi* which is challenged by the defendants. He has also submitted that if the contention of the plaint is read as a whole, it would emerge that the plaintiff is seeking relief of cancellation of sale-deed and alternatively for recovery of the balance amount of sale transaction. He has submitted that even if the plaintiff is an unpaid seller for the consideration of the land in question, then the remedy is to file suit for recovery of the sale price, but, he cannot now agitate that no title was passed in favour of the defendants. He has submitted that the plaintiff has alleged that certain amount of almost 6 crores has been returned back to the defendants, but he has not given any explanation as to why that amount came to be returned to

the defendants. By referring to Section 31 of the Specific Relief Act and various decisions, he has submitted that suit itself is not maintainable. He has submitted that when the document is registered, no oral evidence as to the contents of the documents is admissible. While relying upon the decision of the Apex Court in case of Dahiben v. Arvindbhai Kalyanji Bhanushali, reported in 2020 SCC Online SC 562, he has submitted that the plaintiff can file suit for recovery of balance amount, but he cannot restrain the defendants from dealing with the property as the defendants have become owners by way of sale-deed. He has also submitted that in order to constitute a sale, the conduct of the parties, recital of the sale-deed and the evidence on record are required to be considered. He has submitted that considering the conduct of the plaintiff as well as recital in the document, which is registered document, it clearly emerges that the title has already been passed in favour of the defendants and the plaintiff has no right of restraining the defendants from exercising the right over the property in question.

- 6.2 He has also submitted that there is no dispute regarding the execution of sale-deed, possession being already handed over to the defendants, mutation entry in the revenue record regarding the sale transaction and the certification thereof in the year 2016 itself, and block division and Plotting, mortgage of the land to the financial institution, who is not made party to the suit and there is no possibility of putting the land in its original condition,

are all the factors which are known to the plaintiffs and this conduct of the plaintiff needs to be considered in the matter.

6.3 While referring to the Sauda Chithhi dated 25.12.2014, Mr. Pandya has submitted that at the relevant time in the year 2014, the land has been shown in the name of Joint owners signs of Hiralal and Balwantbhai whereas the sale deed was executed in the year 2016 and during these two years, no dispute has been raised regarding the non-payment of the alleged price as stated in the Sauda Chithhi. He has also submitted that the action of the plaintiff in instituting the Suit is suffering from delay and laches by conduct. He has also submitted that the trial Court has committed serious error of facts and law in passing the impugned order . He has submitted that even if it is believed that the plaintiff is unpaid seller, then for the payment of remaining consideration money is required and for that selling of the Plots is necessary. He has submitted that prior to filing of the suit, no legal notice has been issued contending the execution of the Sauda Chithhi or regarding non-payment thereof. He has submitted that trial Court itself has stayed its order till one month and, therefore, the said order be set-aside on facts of the case. He has relied upon the following decisions:

1. K.B. Saha and Sons Pvt. Ltd v. Development Consultant Limited, reported in (2008) 8 SCC 564;

2. Kalathooru Raghavareddi v. Kalathooru Venkatareddi and Ors, reported in AIR 1955 AP 22;
 3. Barium Chemicals Ltd. v. Vishwa Bharti Mining Corporation and Anr, reported in (2009) 16 SCC 262;
 4. Dahiben V. Arvindbhai Kalyanji Bhanushali, reported in 2020 SCC OnLine SC 562;
 5. Vidyadhar v. Manikrao, reported in (1999) 3 SCC 573;
 6. Shanti Kumar Panda v. Shakuntala Devi, reported in AIR 2004 SC 115;
 7. Martin Burn Ltd. v. R.N.Banerjee, reported in AIR 1958 SC 79;
 8. Gujarat Electricity Board, Gandhinagar v. Maheshkumar and Co., Ahmedabad, reported in 1995 (5) SCC 545;
 9. Dalpat Kumar v. Prahlad Singh, reported in AIR 1993 SC 276;
 10. Bikash Chandra Deb v. Vijaya Minerals Pvt. Ltd, reported in 2005 (1) CHN 582.
7. Per contra, Mr. R.R. Marshal, learned Senior Counsel for the plaintiff has vehemently submitted that as the plaintiff was

defrauded by the defendants and has not paid the huge amount of consideration upon the Sauda Chithhi and the fact that Rs. 6 Crores was returned back by the plaintiff, as per the bank's statement, the title of the property could not be said to be passed in favour of the defendants. He has submitted that the averment of the plaintiff regarding the Sauda Chithhi has not been denied by the defendants in written statement. He has submitted that the plaintiff and the defendants are having old friendship and having trust upon the defendants, the plaintiff has executed the sale-deed in anticipation that the defendants will pay the remaining amount. He has submitted that the time schedule given in the sale-deed as to payment by cheques, if considered as per page-6 of the appeal memo, it reflects that the cheques of year 2016 came to be released in the year 2018. He has submitted that due to friendship, as the defendants had requested the plaintiff to pay back Rs. 6 Crores as they have some financial difficulties in getting necessary financial assistance from others, the plaintiff has returned back Rs. 6 Crores by way of three installments which is reflected from the bank's statement of the plaintiff. He has submitted that it was for the defendants to show and explain as to why Rs. 6 Crores has been returned back. He has also submitted that the cheques of year 2016 would be time barred within the specified period and now that cheque of year 2016 is encashed in 2018 i.e. after 2 years of sale transaction. He has submitted that this fact support the averments of the plaintiff that the entire sale transaction under the sale deed has not been passed to the

plaintiff. He has also submitted that during the pendency of the suit, there was MoU entered into between the parties which is at Page-63 of the compilation and it is a notarised document upon which there are signatures of the defendants, which is not denied by the defendants. He has also submitted that in view of the averment of the selling of the Plots to third party, the plaintiff has to move an application for impleading all those parties. He has submitted that the point raised by the defendants regarding mortgage could be taken into consideration at the time of trial. He has also submitted that so far as question of limitation is concerned, it is a mixed question of facts and law.

- 7.1 Mr. Marshal, learned Senior Counsel has also submitted that the land is an open Plot and construction is not carried out. He has submitted that the trial Court has properly observed in the order that there is a doubt regarding clear title being passed in favour of the defendants. He has also submitted that so far as the relying upon the decision of Dahiben's case is concerned, it is factually different. He has submitted that in present case, the sale deed itself is a fraud upon the plaintiff and, therefore, there is allegation of fraud which is substantiated by the documentary evidence which includes MoU entered into between the parties during the pendency of the Suit, prima-facie it may be presumed that no clear title is passed in favour of the defendants. He has submitted that considering the factual aspect of the case and circumstances of the case, the trial

Court has passed proper order which does not need to be interfered with by this Court as the order passed by the trial Court is discretionary one and it is plausible. Regarding the other decisions relied upon by the learned Senior Counsel for the defendants, Mr. Marshal, learned Senior Counsel for the plaintiff submitted that those decisions are not applicable on the facts of the present case. He has prayed to dismiss the present appeal.

8. In rejoinder, Mr. Pandya, learned Senior Counsel for the defendants has submitted that the plaintiff has not come with clean title. He has submitted that the reliance placed on the decision in the case of Janakdulari Devi and Other v. Kapildevrai and Others, reported in Civil Appeal No. 4422 of 2002, are not applicable to the present case. He has prayed that the impugned order of the trial Court be set-aside.
9. In the case of K.B. Saha and Sons Pvt. Ltd v. Development Consultant Limited (Supra), it was held that any clause of unregistered lease deed could not be taken into consideration even for collateral purpose.
10. In the case of Kalathooru Raghavareddi v. Kalathooru Venkatarreddi and Ors (Supra), the Court has observed that combined reading of Section 17 (1) and Section 49 of the Registration Act, 1908 directs that unregistered partition deed or an award cannot affect any immovable property and therefore, there is no question of admissibility of such document and its non-registration invalidates transaction

altogether.

11. In the case of Barium Chemicals Ltd. v. Vishwa Bharti Mining Corporation and Anr (Supra), the fact was that the document was not properly stamped and therefore it was observed that the document which is not duly stamped and is also not registered though required to be registered, can be admitted in evidence for collateral purpose under proviso to Section 49 of the Registration Act but so far as the stamp duty is concerned, if the document is not duly stamped, it has to be dealt with under Section 35 of the Indian Stamp Act before it is admitted in evidence failing which, by virtue of Section 36, admission of document in evidence cannot be questioned at any later stage.
12. In the case of Dahiben V. Arvindbhai Kalyanji Bhanushali (Supra), while considering the earlier decision in the case of Vidyadhar v. Manikrao and Anr, reported in (1999) 3 SCC 573, the Supreme Court has held that if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed. It has also endorsed the view that in order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in *praesenti*, or in future. The intention is to be gathered from

the recitals of the sale deed, the conduct of the parties, and the evidence on record.

13. In the case of Shanti Kumar Panda v. Shakuntala Devi (Supra), it was observed that at the stage of passing of interlocutory order such as on an application for the grant of ad interim injunction under Rule 1 or 2 of Order 39 of the COP, the competent Court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and the irreparable injury – the three pillars on which rests the foundation of any order of injunction. At that stage material in the shape of affidavits, documents and pleadings is place before the Court for its consideration.
14. In the case of Martin Burn Ltd. v. R.N.Banerjee (Supra), it is factually different as there was a case of discharge of employee wherein Tribunal's power regarding setting aside the ex-parte order was held to be proper.
15. In the case of Gujarat Electricity Board, Gandhinagar v. Maheshkumar and Co., Ahmedabad (Supra), the matter was relating to a contract and considering the facts of that case it was observed that the Court had no jurisdiction to grant injunction.
16. In the case of Dalpat Kumar v. Prahlad Singh (Supra), the principle regarding the exercise of power under Order 39 Rule 1 of CPC for granting injunction has been reiterated.

17. In the case of Bikash Chandra Deb v. Vijaya Minerals Pvt. Ltd (Supra), the fact was that there was an agreement between the parties which relates to specific performance of movables articles and in that view of the matter, it was held that it was trite that equity will not rewrite an improvident contract where there was no disability on either side.

18. Now it is well settled that the prayer for granting of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its denial by the defendants. The Court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie.

19. It is also well settled law that the Appellate Court may not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by the court was reasonably possible on the material. The appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.
20. Considering the submission made on behalf of both the sides and the materials placed on record and the settled principles of law in the decisions as referred to hereinabove, it reveals that there is no dispute regarding the execution of sale deed dated 8.1.2016. There is also no dispute that the possession of the land has been handed over to the defendants by the plaintiff. It is also revealed from the record that at the time of execution of the sale deed, cheques were issued by the defendants of the year 2016. It also reveals from the Memo of Appeal that all the cheques have been credited in the Account of the plaintiff in the year 2016 and certain cheques have been credited in

the year 2018 i.e. after almost 2 years of the execution of the sale deed. As per the Bank's statement produced by the plaintiff, it also reveals that initially after credit of 4 cheques, Rs. 2 crores were returned back to the defendants and in similar manner, total Rs. 6 Crores have been returned back to the defendants. Now it is the stand of the defendants that plaintiff has mixed other transaction with the present sale transaction of the present land. This averment of the defendants suggest that in addition to the sale transaction, there is some other transaction entered into between the parties. The defendants have tried to shift the burden on the plaintiff to show as to for what purpose Rs. 6 Crores have been returned back. Now since the defendants itself has asserted that there is other transaction between the parties, then it is for the defendants to show that for which transaction Rs. 6 Crores have been returned back to it. It also appears from the record that plaintiff is relying upon one Sauda Chithhi, which is unregistered.

21. Further, it appears from the record that during the pendency of the suit some MoU has been entered into between the parties and the said MoU has been notarised by the parties, which is dated 15.1.2020 i.e. after the filing of the Suit. The same has been produced along with the paper-book. The defendants has not denied that no such MoU has been entered into between the parties after filing of the Suit. On perusal of it, it clearly reflects that there is averments regarding the Sauda Chithhi dated 25.12.2014.

There is also averment regarding the pendency of the Suit and also the recital of the sale deed dated 8.1.2016. There is also recital that the alleged sale deed was executed on the basis of the trust upon the defendant and for the convenience of the defendant. This fact is indirectly admitted by the defendant as it has not denied the signature thereof. Thus, it is a peculiar facts where the defendant itself has accepted by way of MoU that no full consideration is yet paid and sale deed was executed on the trust and for the convenience of the defendants. Under the circumstances, the title of the defendant is under the cloud.

22. On perusal of the impugned order of the trial Court, it appears that considering the facts and circumstances of the case and especially the MoU entered into between the parties, the view taken by the learned trial Court cannot be said to be unreasonable or illegal or arbitrary. The view taken by the trial Court is plausible one. Under the circumstances, considering the circumscribed power of the Appellate Court in interfering with the discretionary order of the trial Court, this Court is of the considered view that there is no need to interfere with the impugned order passed by the trial Court.
23. Therefore, in view of the above, the present appeal from order deserves to be dismissed. Accordingly it is dismissed. The impugned order dated 17.2.2022 passed below Exh-5 in Special Civil Suit No. 67 of 2019 passed by the learned Principal Senior Civil Judge and Additional Chief Judicial

Magistrate, Kathor District: Surat restraining the defendants to sale, transfer, mortgage or pass any interest to third party and to maintain status-quo as far as unsold plots from a total 447 Plots in the suit property situated at Village: Kamrej, Taluka: Kamrej and District: Surat, is hereby confirmed till the final disposal of the Suit.

24. It is clarified that trial Court shall not be influenced by any of the observation made by this Court while deciding the Appeal from Order and shall decide the Suit on the basis of the evidence that will be led by both the sides in accordance with law.

No order as to costs.

In view of the main Appeal being dismissed, the Civil Application does not survive and the same stands disposed of accordingly.

SAJ GEORGE

(DR. A. P. THAKER, J)

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