

(2016) 09 BOM CK 0172

In the Bombay High Court

Case No : Appeal From Order No. 482 of 2015 with Civil Application No. 621 of 2015

Dipak Development Corporation

APPELLANT

Vs

Veena Vithaldas Sampat

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (2016) 6 ALLMR 641 : (2017) 1 MhLJ 619

Hon'ble Judges : Dr. Shalini Phansalkar-Joshi, J.

Bench : Single Bench

Advocate : M.J. Jamdar, Advocate, for the Respondent No. 3; Kapil N. Gor, Advocate, for the Respondent No. 25; Nishant Sasidharan i/b Mr. S.S. Redekar, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar-Joshi, J.(Oral) - This appeal is directed against the order dated 16.10.2014 passed by the City Civil Court, Mumbai in an unregistered Notice of Motion in S.C. Suit No. 5540 of 2007. By the said order, the Trial Court has rejected the Notice of Motion filed by the present appellant. By the said Notice of Motion, the appellant was seeking the relief of interim injunction restraining respondent Nos. 3 and 25 from creating any third party interest in the suit flat bearing No.201 in Building "C" at Khajuria House, Khajuria Nagar, Kandivali (W), Mumbai. The reasons assigned by the Trial Court for dismissal of this Notice of Motion are two fold. The first reason is that, vide the order dated 19.12.2007 passed in Notice of Motion No. 3069 of 2007 by this Court, the interim relief of injunction was granted restraining original defendant Nos.1 to 9, 15 to 19 and 21 to 23 from creating third party interest or disposing of the original suit property in any event. The Trial Court observed that respondent No. 3 i.e. defendant No.3 in the Trial Court suit was already party in the said Notice of Motion. Therefore, the order of interim injunction granted by this Court on 19.12.2007 was binding on respondent No. 3 also and in such situation, the

appellant can take any necessary steps if there is breach of that order. No further Notice of Motion seeking the same relief of interim injunction is necessary.

2. The second reason on which the Trial Court has rejected the Notice of Motion is that the suit was already seven years old and ripe for hearing. It was also taken up for final hearing and at this stage as the relief of interim injunction was sought of the same nature and on the same ground the Trial Court deemed it fit to reject the Notice of Motion.

3. This order of the Trial Court is challenged in this appeal by the learned counsel for the appellant by submitting that merely because the suit was ripe for final hearing does not mean that respondents should keep on creating third party interest in the suit property. By pointing out to the various documents produced on record, especially, the agreement dated 06.08.1978, it is submitted that the present suit is filed by the appellant before the Trial Court for specific performance of the said agreement of development and during the pendency of the suit, if the parties keep on creating third party interest in the suit property, then it will create hurdles in getting the decree for specific performance of the agreement. It is submitted that already third party interest was created in this particular suit flat No. 201 by the original defendant Nos. 21 and 24 by creating third party interest in favour of respondent Nos. 3 and 25. There is every likelihood of these respondents further creating third party interest in the suit flat and, therefore, it has become necessary to restrain them from doing so, so as to avoid multiplicity of proceedings. According to learned counsel for the appellant, the Trial Court has wrongly observed that the earlier order passed on 19.12.2007 was also binding on respondent Nos. 3 and 25. It is submitted that, if they had purchased the suit flat as alleged by them in their independent capacity as a third party purchaser, that order may not be binding on them and, therefore, this Court should pass an order of interim injunction restraining respondent Nos. 3 and 25 from creating any third party interest till the decision of the suit.

4. Per contra, learned counsel for respondent No. 25 was submitted that this respondent was never party to the original suit, especially, when the order of interim injunction was passed by this Court. Moreover, though respondent No. 3 was party to the suit, she was impleaded as legal heir of the executant of the agreement. Now, she has along with her son, respondent No. 25 independently purchased suit flat No. 201. They are third party purchasers and in such situation, they are not in any way bound by the obligation of the original owner/executant relating to the execution of the specific performance of the agreement. It is urged that they had purchased the suit flat by a registered sale deed dated 20.11.2006. the suit was filed on 02.08.2007 and the orders were passed in the said suit on 19.12.2007 and 30.11.2009. In such situation, it is urged that they cannot be bound by any obligation created by the earlier owner and they are also not bound by any terms of the agreement so as to execute the specific performance of the contract. They are also not bound by the orders passed by this Court. Hence, according to learned counsel for respondent Nos. 3 and 25,

absolutely no case is made out by the appellant for grant of interim relief of injunction as sought, against them.

5. Now, in order to appreciate and understand the controversy involved in this appeal, it would be necessary to take a look at certain facts and events. It is a matter on record that one Dwarkadas was the owner of the suit flat No. 201. He has died issueless, survived by his wife Rukshmaniben, who has died on 14.02.2005. She has executed her last will dated 01.01.2003. On the basis of the said will, the executors, namely, respondent Nos. 4 and 21 became the successors to suit Flat No. 201. As per the will, the executors were to sell the suit flat and hand over the proceeds to the charity. Accordingly, original respondent Nos. 4 and 21 sold the suit flat to the present respondent Nos. 3 and 25 by registered sale deed dated 20.11.2006.

6. It is pertinent to note that the suit is filed much thereafter in August, 2007 by the appellant seeking specific performance of the agreement for development executed on 06.08.1978 by respondent No. 3 and other co-owners of the property in respect of entire property. Respondent No. 25 was not made party to the said suit. Respondent No. 3 was made party to the said suit but it was in her capacity as the legal heir of the original owner/executant for specific performance of the agreement was sought. It is specific case of respondent No. 3 that she had purchased the suit flat along with respondent No. 25 independently as a third party purchasers and, therefore, whatever obligations which were with her in her capacity as the co-owner of the property, cannot be binding on her as far as suit flat No. 201 is concerned.

7. I find much substance therein. Needless to state that respondent Nos. 3 and 25 are the third party purchasers, so far as the suit flat is concerned and, therefore, no relief of specific performance of the agreement can be enforced against them as such, despite the provisions of Section 19 of the Specific Relief Act on which learned counsel for the appellant has placed reliance. Moreover, the earlier order of interim injunction which was again not passed against respondent No. 3 but against other respondents, also cannot be binding on her. When these orders were passed, respondent No. 25 was not added as a party and though respondent No.3 was already to the said suit and injunction, no order of interim injunction was passed against her. The order of interim injunction was limited only in respect of certain respondents as stated in the said order dated 30.11.2009.

8. The present respondent No. 25 is made as a party only by virtue of order dated 26.09.2016 passed by this Court in Writ Petition No. 371 of 2016 and that too in independent capacity as the third party purchaser of the suit flat. In these circumstances, no case is made out by the appellant to seek the relief of interim injunction against these respondents in respect of suit flat No. 201. So far as the rest of the property in respect of which respondent No. 3 may be liable in her capacity as legal heir of the original owner, that is the different matter but as far as the suit flat No. 201 is concerned, the appellant cannot be entitled for the

relief of interim injunction as claimed.

9. There is also no question of appellant suffering any loss or hardship because the bar of lis pendense under Section 52 of the Transfer of Property Act will come into play if the appellant registers notice of the suit if there is any apprehension that respondent Nos. 3 and 25 may create further rights in respect of suit flat No. 201.

10. Otherwise also, in my considered opinion as the suit is already ripe and fixed for hearing, the interest of justice requires that both the parties should co-operate to the Trial Court for finally disposing of the suit at the earliest instead of wasting time in the proceeding of interim nature.

11. As a result, the appeal holds no merits, hence stands dismissed.

12. At this stage, it is clarified that whatever observations herein above are only made for the purpose of deciding this appeal, the Trial Court shall not get influenced by them and decide the suit on its own merits, in accordance with the law.