

GJPM010006642023



Order Below Exh.4
in
Regular Civil Appeal No. 12 of 2023

In the matter of
Heirs of decd. Dashratsinh Bhupatsinh Appellants
Vs.
Heirs of decd. Jalubhai Shankarbhai & Ors. . . . Respondents
=====

1. This appeal was admitted on 02.03.2022. Urgent show-cause notice was issued to the respondents as well as Ld. Advocate for respondents. Notices are duly served upon the respondents as well as Ld. Advocate Mr. J.K.Shah, who has filed caveat on behalf of the respondents. At around 4-30 in the evening, Ld. Advocate Mr. Gaurang Shah appears for the respondents.
2. This is an appeal by unsuccessful plaintiffs, challenging the judgment and decree delivered in Regular Civil Suit No. 19/2013. As per the Ld. Trial Court, it was case of the plaintiff that, on 14.08.1972, deceased Jhalubhai Shankarbhai Pagi had executed agreement to sale in favour of deceased Dashrathsinh Bhupatsinh Solanki and plaintiffs No. 2 & 3, by taking sale consideration of

Rs.10,401/-, regarding land of S.N. 198, admeasuring 3-Acre, 20-Guntha, situated at village Vhaka, Ta. Shahera. The possession of the land was also handed over to deceased Dashrathsinh Bhupatsinh and plaintiffs No. 2 & 3, by deceased Jalubhai Shankarbhai Pagi, at the relevant time, which is continuously held by unsuccessful plaintiffs.

3. As per the case of the unsuccessful plaintiffs, the land which was agreed to sell to the plaintiffs was new tenure land and therefore, in view of the condition mentioned in the agreement, the sale-deed was to be executed, once the land is converted into old tenure land. It is further the case of unsuccessful plaintiffs that deceased Jhalubhai Shankarbhai was expired on 25.11.2009, thereafter his heirs have been reluctant to execute the sale-deed in favour of the plaintiffs and therefore plaintiffs, who are in possession of the suit land, invoking the doctrine of part performance u/sec. 53-A of the Transfer of Property Act, sought relief to protect their possession.
4. Ld. Trial Court, after recording evidence of both the sides and considering the arguments canvassed by Ld. Advocates for both the sides, was pleased to dismiss the suit. However, prior to dismissal of the suit, interlocutory injunction was operated in favour of the plaintiff, as interim application at Exh.5 was granted in

favour of the plaintiffs. Ld. Advocate Mr. P.D.Pathak, who appears on behalf of the appellants/plaintiffs, submits that no appeal from order was filed against the order passed below Exh.5, challenging the order passed in favour of the plaintiffs.

5. In nutshell, uptill dismissal of suit, plaintiffs were enjoying protection to their possession over the suit land of S.N. 198. After dismissing the suit, plaintiffs have filed application at Exh. 125 to extend interim injunction, which was continued for (30) days from the date of dismissal of the suit.
6. The successful defendants have filed caveat before this Court. In view of the filing of the caveat, this Court found it necessary to hear the respondents herein before passing any injunctive order. Thus, show-cause notice were issued to the respondents as well as Ld. Advocate Mr. J.K.Shah, who has filed caveat on behalf of the respondents. Ld. Advocate Mr. Gaurang Shah, who is representing the respondents, makes two fold submission. Firstly, he submits that the unsuccessful plaintiffs are not in actual possession of the suit land. He would further submit that the document styled as agreement to sale, does not match the provision of Transfer of Property Act and since this is unregistered document, it cannot be looked into for the purpose of believing the possession of the unsuccessful plaintiffs.

Alternatively, the Ld. Advocate Mr. Gaurang Shah submits that, if the Court is of the favour of the interim injunction granted by the Ld. Trial Court and that injunction is continued till dismissal of the suit and is now to be extended during the hearing of the appeal, the final hearing of the appeal may be scheduled and order for early disposal of the appeal may be passed.

7. Insofar as above contention is concerned, it requires the full fledged hearing of the appeal and evidence recorded before the Ld. Trial Court is required to be re-scrutinized and reanalyzed, which cannot be done at this stage.
8. It appears that, since 30.09.2013, the date on which plaintiffs had been given injunction, plaintiffs are enjoying protection of possession over the suit land, without any hindrance or hiccup. While passing the order below Exh.5, Ld. Trial Court has categorically held that plaintiffs were in possession of the suit land since execution of the agreement to sale, i.e. from 14.08.1972. Ld. Trial Court, while dismissing the suit, had taken resort of the aspect that agreement to sale is unregistered document, therefore cannot be read for collateral purpose u/sec. 49 of the Registration Act. *Prima facie* this Court is unable to concur with the finding of the Ld. Trial Court, *inter alia* on the ground that Sec. 49 of the Registration Act has been amended in

the year-2001 and the provision is inserted that unregistered agreement to sale cannot be looked for the purpose of deciding part performance, however in the present case the agreement to sale was dated 14.08.1972, so whether the amendment which was inserted into Sec. 49 of the Registration Act can be read for the agreement to sale executed on 14.08.1972, is a debatable question during hearing of the appeal. But the unsuccessful plaintiffs/appellants, who are enjoying uninterrupted possession since 14.08.1972 is required to be protected by way of passing interim order. The alternative submission canvassed by the Ld. Advocate Mr. Gaurang Shah is acceptable, since, on the basis of unregistered document, dispute between the parties is running since year-1972, hence the appeal is required to be heard expeditiously and in that regards necessary order is required to be passed.

9. In wake of the above reasons, I pass following order :

ORDER

1. This application at Exh.4 is partly allowed.
2. Relief claimed in para-5(1) of the application is hereby granted, till further order.
3. Accordingly, judgment and decree delivered in Regular Civil Suit No. 19/2013 is hereby kept in abeyance, till further order and the

order passed below Exh. 125, giving extension to the order passed below Exh.5 in Regular Civil Suit No. 19/2013 is hereby extended till further order.

4. The final hearing of the appeal is expedited. Both the parties are hereby directed to positively co-operate this Court in the final hearing of the appeal, which shall be concluded as early as possible, but not later than six months from today.
5. Needless to say that observations made hereinabove shall not influence the final decision of the appeal.
6. R & P of Regular Civil Suit No. 19/2013 is called for from the Ld. Trial Court.
7. Costs shall follow the cause.

Pronounced in the open Court today,
on this 4th day of March, 2023.

Dt.04.03.2023.
G O D H R A.

(Jitendra C. Doshi)
Principal District Judge,
Panchmahals, at Godhra.
UID CODE No.GJ00909.