



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.658 OF 2019**

Navnath Dattatray Lokhande and Ors.

Applicants

(Original Defendant

.. Nos. 3 to 5)

**Versus**

Kunal Vikram Sawant and Ors.

.. Respondents

- .....
- Mr. Chaitanya B. Nikte a/w. Mr. Swapnil Sangle, Advocates for Applicants.
  - Mr. Jaydeep Deo, Advocate for Respondents.
- .....

**CORAM** : MILIND N. JADHAV, J.

**DATE** : JANUARY 02, 2025.

**JUDGEMENT:**

**1.** Heard Mr. Nikte, learned Advocate for Applicants and Mr. Deo, learned Advocate for Respondents.

**2.** The present Civil Revision Application (for short “**CRA**”) challenges the order dated 17.10.2019 passed by the learned Trial Court below Exhibit “26” in Special Civil Suit No.851 of 2019 whereby Application filed by Defendant Nos.3 to 5 under provisions of Order VII Rule 11 of Code of Civil Procedure, 1908 (for short “**CPC**”) for rejection of Suit plaint / Suit has been rejected.

**3.** Parties shall be referred to as “Plaintiffs” and “Defendants” for ease of reference and convenience. Plaintiffs filed Special Civil Suit (for short “**SCS**”) No.851 of 2019 seeking cancellation of registered Sale Deed dated 28.05.2018 executed between Defendant No.1 and

Defendant Nos.3 to 5 and also sought injunction against Defendant Nos.3 to 5. In the said Suit, Plaintiffs have arraigned the Defendants in two groups. Defendant No.1 is Krushnabai @ Kisnabai Ganpat Alandkar / Koli who is admittedly the owner of Suit Property described as land bearing Survey No.175 Hissa No.3 situated in Village Manjairi Budruk District Satara admeasuring 0 H 95 R (for short “**Suit property**”). Suit property originally belonged to husband of Defendant No.1 Mr. Ganpat Alandkar who expired on 31.08.1989. There was certain Government encumbrance on the Suit property and therefore name of State Government was reflected in the Revenue Record alongwith the name of Mr. Ganpat Alandkar since long. Defendant No.2 is Vitthal Narayan Alandkar, a relative of Defendant No.1 and constituted Power of Attorney of Defendant No.1. Defendant No.2 represented Defendant No.1 before the Revenue Authorities and successfully managed to remove the name of the State Government from the Revenue Record of the Suit property as also brought on Revenue Record the name of Defendant No.1 Krushnabai Ganpat Alandkar as holder of the Suit property.

**4.** On 21.03.2012, Defendant No.1 executed a registered Power of Attorney appointing Defendant No.2 as her constituted Power of Attorney, *inter alia*, giving him all powers to deal with the Suit property.

**4.1.** On 24.07.2014, Defendant No.2 on behalf of Defendant No.1 executed Agreement for Sale and granted Power of Attorney, both dated 24.07.2014, on the basis of Power of Attorney dated 21.03.2012, to sell the Suit property to Plaintiffs. Both, Agreement for Sale and Power of Attorney were duly registered in the office of Sub-Registrar, Haveli-III, Pune. Affidavit of Defendant No.1 dated 07.02.2014 in support of the above transaction was annexed to the Agreement for Sale. By virtue of the said Agreement, Defendant No.1 agreed to sell the Suit property to Plaintiffs for consideration of Rs.1,00,00,000/- (Rupees One Crore only). Annexed to the said registered Agreement were 14 cash voucher receipts totalling to Rs.31,00,000/-. It was stated in the said registered Agreement that balance sale consideration would be paid by Plaintiffs at the time of registration of Sale Deed. Thereafter on 28.06.2018, Sale Deed was executed and registered between Defendant No.2 acting as Defendant No.1's constituted Power of Attorney and Plaintiffs. Averment made in the said Sale Deed is that pursuant to Agreement for Sale dated 24.07.2014, Defendant No.2 on behalf of Defendant No.1 received Rs.69,00,000/- from time to time. No details of the monies received are given in the said Sale Deed, save and except the aforesaid statement.

**4.2.** Simultaneously with the transaction of Defendant No.2 with Plaintiffs, there were another set of transactions undertaken by

Defendant No.1 herself as owner of the Suit property for sale of the Suit property. On 21.09.2016, Defendant No.1 entered into registered Agreement for Sale with Defendant Nos. 3 to 5 for sale of Suit property for total consideration of Rs.2,15,00,000/-. On the date of execution of this Agreement for Sale, it is stated in the Agreement that Defendant No.1 received Rs.75,00,000/-. Cash vouchers of Rs.75,00,000/- are annexed to the Agreement. Thereafter on 28.05.2018, Defendant No.1 and Defendant Nos.3 to 5 executed and registered Sale Deed in respect of the Suit property. In clause 18 of this registered Sale Deed, it is stated that total consideration of Rs.2,15,00,000/- was received by Defendant No.1 as per the Schedule annexed to the Sale Deed. However, when that Schedule of payment is perused, it reflects that on the date of the Sale Deed i.e. 28.05.2018, Defendant No.1 actually received only Rs.5,00,000/- in cash as per cash vouchers annexed thereto and the rest of the amount as stated therein was given by way of post dated cheques drawn between 15.07.2018 to 15.12.2018. However, when the total of the cash vouchers/receipts of consideration paid by post dated cheques is added, it is seen that it adds to approximately Rs.1,32,00,000/- only. The gap between Rs.1,32,00,000/- and Rs.2,15,00,000/- is not explained in the said sale deed nor by the parties in their pleadings neither confirmed by Defendant No.1.

**4.3.** Thus, it is seen that there are two registered Agreements for

Sale and two registered Sale Deeds which are the subject matter of the present Suit proceedings. There is one more event which has significant repercussions on the right of the Defendant No.1 to transfer the Suit property after 30.06.2016 due to an injunction order operating against the Defendant No. 1.

**4.4.** In the above background, when the Suit was filed by Plaintiffs, Defendant Nos.3 to 5 filed Application below Exhibit “26” under Order VII Rule 11 on the ground that Agreement for Sale dated 24.07.2014 executed in favour of Plaintiffs was without possession of the Suit property and therefore inconsequential. Further they pleaded that recourse cannot be taken to seek cancellation of the registered Sale Deed dated 28.05.2018 executed in favour of Defendant Nos.3 to 5. It is Defendant Nos.3 to 5’s case that registered Sale Deed of the said Defendants (dated 28.05.2018) is in any event prior to the registered Sale Deed with Plaintiffs (dated 28.06.2018) and therefore Plaintiffs can have no cause of action. It is further argued by Defendant Nos.3 to 5 that injunction order dated 30.06.2016 pleaded by Plaintiffs passed in Regular Civil Suit (for short “RCS”) No.669 of 2015 operating against Defendant No.1 was in a Suit filed by a third party in respect of the Suit property and it would apply to both the registered Sale Deeds of Plaintiffs as well as Defendant Nos.3 to 5 and therefore Plaintiffs cannot plead a better or higher right than Defendant Nos.3 to 5. It is further pleaded and argued that Plaintiffs have not placed the

injunction order dated 30.06.2016 passed by the Civil Court in RCS No.669 of 2015 on record.

**4.5.** To the above Application below Order VII Rule 11 of CPC Plaintiffs filed their reply below Exhibit “30” and contended that their Agreement for Sale dated 24.07.2014 was a registered Agreement which subsisted and was not cancelled by either the Defendant Nos.1 or 2; that it subsisted on the date of registration of Sale Deed dated 28.06.2018 with them; that Defendant No.1 was a party to RCS No.669 of 2015 and was clearly aware about the injunction order passed therein whereas Defendant No.2 her constituted Power of Attorney was not a party to the said Suit; that it is Defendant No.1 who executed the Sale Deed dated 28.05.2018 in favour of Defendant Nos.3 to 5 despite the injunction order passed by the Civil Court operating against Defendant No. 1 and under the registered Agreement for Sale and registered Sale Deed dated 24.07.2014 and 28.06.2018 substantive rights were created in favour of Plaintiffs and therefore Plaintiffs were entitled to maintain the Civil Suit on the cause of action emanating from the aforesaid transactions between the parties.

**5.** Though written statement of Defendant Nos.3 to 5 was filed on 09.09.2019, for the purpose of deciding Application below Order VII Rule 11 of CPC, what is required to be considered are the averments made in the Suit plaint in conjunction with the documents

relied upon therein as a whole without any addition or subtraction and to find out whether any cause of action, *prima facie*, is disclosed therefrom without embarking upon an inquiry at this stage about the truthfulness of the allegations of fact. The ethos of Order VII Rule 11 of CPC would require the Court to consider whether the Suit plaintiff discloses any right to sue for maintainability of the Suit and only if Court finds the Suit to be manifestly vexatious, it would be justified in exercising power under Order VII Rule 11(a). What is crucial for the Court is to find out whether the Suit plaintiff discloses real cause of action or an illusory cause of action created by clever drafting.

**6.** In the backdrop of the above legal provisions, the parties are before me due to rejection of Defendant Nos.3 to 5's Application by the learned Trial Court seeking rejection of plaint. The learned Trial Court while passing the order dated 17.10.2019 in paragraph No.6 has returned its findings. For reference and convenience paragraph No.6 is reproduced herein below:-

*"6) I have given thoughtful consideration to the said argument. It is well settled principle that, while dealing with the application under Order 7 Rule 11 of CPC only plaint need to be seen and the document on which plaintiff claim his based and nothing else. On meaningful reading of the plaint it appears that, the plaintiff is claiming his right on the basis of agreement to sell and registered power of attorney. The plaintiff came with this specific case that, the power of attorney and agreement to sell never terminated by the plaintiff or defendants. Therefore, the plaintiff holding valid agreement to sell , power of attorney and registered sale deed. The plaintiff also claim that, the defendant No.1 and 3 to 5 made collusion. It is also contention of the plaintiff that, there was injunction order against the defendant No.1 to create the third party interest. Therefore, the plaintiff raises the triable issues. There are various complex issues involved in the present suit. Therefore, it need*

*detail trial to comment upon the said issue. Thus, on whole reading of the plaint it cannot be said that, the plaintiff having no cause of action to file the present suit. No doubt the defendant raises the serious issue but it can only be answer after detail trial and evidence adduced by the parties as it involves mixed question of facts and law. Therefore, I am of the view that, the plaintiff cannot be nonsuited at this preliminary stage. Thus, I am of the view that, the plaintiff having cause of action to file the present suit. Hence, I pass the following order:-*

**ORDER**

1) *The application is rejected.”*

**7.** From the above, it is seen that the learned Trial Court has concluded that triable issues have been raised by Plaintiffs on the basis of the aforementioned registered transactional documents between the parties. That apart, learned Trial Court has held that the fact that there may be collusion between Defendant Nos.1 and 2 on one hand and Defendant Nos.3 to 5 on the other hand cannot be ruled out and the objection raised by Defendant Nos.3 to 5 can only be answered in a trial. Further, learned Trial Court has held that the injunction order in RCS No.669 of 2015 was prevalent and such an injunction order would undoubtedly affect all transactional documents executed and registered thereafter, including the transactional documents with Plaintiffs and the Defendant Nos.3 to 5 both. Hence, learned Trial Court held that because the injunction order was in place, it was to the knowledge of Defendant No.1 despite which Defendant No.1 entered into the Agreement for Sale dated 21.09.2016 and the subsequent Sale Deed dated 28.05.2018 with Defendant Nos.3 to 5. Hence, it held that considering that the only registered transactional document dated 24.07.2014 (Agreement for Sale with Plaintiffs) being executed before



the injunction order and the injunction being in place, on reading of the Suit plaint, Plaintiffs raised triable issues and cannot be non suited at the inception stage.

**8.** The above order is challenged in the present CRA. Mr. Nikte, learned Advocate for Defendant Nos.3 to 5 would vehemently submit that the Suit plaint discloses no cause of action whatsoever to seek cancellation of registered Sale Deed dated 28.05.2018. He would submit that the registered Agreement to Sale dated 24.07.2014 executed in favour of Plaintiffs was admittedly without possession of the Suit property and such agreement/transaction would create no legal right whatsoever in favour of Plaintiffs to enable them to file the present Suit seeking cancellation of the registered Sale Deed in favour of Defendant Nos.3 to 5. He would submit that Defendant Nos.3 to 5's Sale Deed is registered prior in point of time than the Sale Deed dated 28.06.2018 in favour of the Plaintiffs and this document transfers the legal ownership of the Suit property to Defendant Nos. 3 to 5. He would submit that under the Transfer of Property Act, 1882, Agreement of Sale would be a mere agreement and it is much below a Sale Deed which creates a legal right in favour of purchaser of property. He would submit that admittedly since Defendant Nos.3 to 5's Sale Deed is prior in point of time, Plaintiffs would have no cause of action merely on the basis of their Agreement for Sale to seek cancellation of Defendant Nos.3 to 5's registered Sale Deed.

**8.1.** On the issue of injunction order passed in RCS No.669 of 2015, he would submit that before the Trial Court the said order was not placed on record and even if it was placed on record and relied upon, in that case it would apply to both registered Sale Deeds dated 28.05.2018 and 28.06.2018 of Defendant Nos. 3 to 5 and Plaintiffs. Hence, he would submit that subsistence of the injunction order restraining Defendant No.1 from transferring the Suit property cannot be relied upon as a ground by Plaintiffs. He would submit that the Suit plaint is bereft of cause of action and on a meaningful reading of the Suit plaint, it deserves to be dismissed at the threshold on the ground that Agreement for Sale to Plaintiffs dated 24.07.2014 is without possession of Suit property and under Section 54 of the Transfer of Property Act, 1882, such an Agreement for Sale does not create any legal right, title or interest in the Suit property. He would submit that the holder/owner of the Suit property namely Defendant No.1 has executed Agreement for Sale and Sale deed both in favour of Defendant Nos.3 to 5 whereas Plaintiffs' Agreement to Sale and Sale Deed is executed by Defendant No.2 as constituted Power of Attorney of Defendant No.1.

**8.2.** He would submit that under the registered Sale Deed dated 28.05.2018 in terms of clause 14, Defendant No.1 has handed over peaceful possession of the Suit property to Defendant Nos.3 to 5. He would submit that once the Sale Deed was executed on 28.05.2018 by

Defendant No.1, Defendant No.2 being her constituted Power of Attorney did not have any legal right to transfer the Suit property to Plaintiffs later as on that date Defendant No.1 ceased to have any right, title or interest in the Suit property and any subsequent Sale deed executed by him thereafter would be without authority of law. He would submit that on the basis of averments made in the Suit plaint, Plaintiffs have no right to maintain the Suit as Agreement to Sale dated 24.07.2014 creates no right in favour of Plaintiffs. He would submit that the Suit is filed merely for cancellation of Defendant Nos.3 to 5's registered Sale Deed and without a declaratory relief or seeking specific performance of the Agreement / Sale Deed in favour of Plaintiffs, no cause of action can arise.

**8.3.** In support of his submissions and propositions made herein above, he would persuade me to consider the following decisions of the Supreme Court:-

- (i) *K. Akbar Ali Vs. K. Umar Khan and Ors.*<sup>1</sup>;
- (ii) *Tej Bahadur Vs. Narendra Modi*<sup>2</sup>; and
- (iii) *Dahiben Vs. Arvindbhai Kalyanji Bhanushali (Gajra) dead, through Lrs. and Ors.*<sup>3</sup>

**8.4.** On the basis of the above decisions, he would submit that according to him the declaration / relief for cancellation of registered Sale Deed cannot be availed by Plaintiffs and Suit has to fail since there is no cause of action and *locus standi* of Plaintiffs to seek

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1 (2021) 14 SCC 51

2 (2021) 14 SCC 211

3 (2020) 7 SCC 366

cancellation of the registered document between Defendant No. 1 and Defendant Nos.3 to 5. Hence, he would urge the Court to set aside the impugned order dated 17.10.2019 passed by the learned Trial Court and allow the Application below Exhibit “26” and resultantly reject the Suit plaint.

**9.**        *PER CONTRA*, Mr. Deo, learned Advocate for the Plaintiffs would submit that the registered Agreement for Sale dated 24.07.2014 is a registered document subsisting on the subsequent dates of the twin documents / transactions of Defendant Nos.3 to 5. He would submit that on 30.06.2016, the learned Civil Court in RCS No.669 of 2015 passed injunction order against Defendant No.1 from dealing with the Suit property despite which three months thereafter on 21.09.2016 Defendant No. 1 and Defendant Nos.3 to 5 executed Agreement for Sale dated 21.09.2016. He would submit that thereafter parties executed Sale Deed dated 28.05.2018. He would submit that before registering both the above transactions any prudent person would undertake a search in the Sub-Registrar’s office which was not done by Defendant Nos.3 to 5. He would submit that in the above transactions between parties, Agreement for Sale dated 24.07.2014 executed in favour of Plaintiffs is the first document prior in point of time which is unfettered even by the injunction order dated 30.06.2016 passed against Defendant No.1. He would submit that this particular Agreement subsists and is not cancelled till date. He would submit that

in view of the subsequent injunction order which would affect all subsequent actions of Defendant No.1 *qua* the Suit property, the provisions of Section 43 of Transfer of Property Act, 1882 would come to the aid of Plaintiffs since there is a priority of right created in favour of Plaintiffs without any restraint of law. He would submit that both transaction documents of Defendant Nos.3 to 5 are executed and registered when the injunction order was in operation. He would submit that in that view of the matter, there is every probability that in the Suit, the Trial Court would come to the conclusion that both registered transactional documents of Defendant Nos.3 to 5 would be illegal, null and *void ab initio* and were executed to deprive the Plaintiffs of their right in the Suit property flowing from their registered Agreement for Sale dated 24.07.2014.

**9.1.** He would draw my attention to the provisions of Section 43 of the Transfer of Property Act, 1882 and contend that it is not required for the Plaintiffs to seek specific performance of their Agreement for Sale dated 24.07.2014 because once the registered Sale deed dated 28.05.2018 is declared as null and void, the Plaintiffs registered Sale Deed dated 28.06.2018 would automatically revive in favour of Plaintiffs. He would submit that if the Suit plaint is seen and the documents / transactions reflected therein are perused, then on the basis of the timeline in respect of the said transactional documents *qua* the substantive rights of the parties to the Suit, disputed questions of

fact have arisen and therefore this clearly leads to raising of triable issues and therefore Plaintiffs cannot be non suited at this stage.

**9.2.** In view of the above propositions, he would urge the Court to dismiss the CRA.

**10.** I have heard Mr. Nikte, learned Advocate for Applicants – Defendant Nos.3 to 5 and Mr. Deo, learned Advocate for Respondents – Plaintiffs and with their able assistance perused the Suit plaint and the two sets of transactional documents. Submissions made by the learned Advocates have received due consideration of the Court.

**11.** I have perused the Suit plaint in SCS No.851 of 2019 appended at page No.13 of the CRA and more specifically paragraph Nos.3 to 7 which relate to the cause of action for filing the Suit proceedings. Before I proceed with the aforementioned registered transactional documents between the parties, it would be prudent to refer to the averments made in paragraph No.7 of the Suit plaint. Reference is made to an injunction order passed in RCS No.669 of 2015 by the Civil Court namely Civil Judge Senior Division, Satara against the Defendant No. 1. This Suit is filed by a third party against Defendant No.1. There is a reference to an injunction order dated 30.06.2016 which is brought to my notice by Mr. Deo whereby the Trial Court enjoined Defendant No.1 from dealing with the Suit property by specifically ordering *status quo* and injunction until the

decision in the said Suit. This injunction order is not denied by Defendant Nos.3 to 5, rather in their Application filed under Order VII Rule 11 of CPC in paragraph Nos.5, 6, 9 and 10 thereof while referring to the said Suit and the said injunction order, all that the Defendant Nos.3 to 5 have stated is that the said order has not been placed on record before the Trial Court. However, there is no denial of the said injunction order by Defendant Nos.3 to 5. That injunction order restrained Defendant No.1 from proceeding further with dealing with the Suit property in any manner post 30.06.2016.

**12.** Be that as it may, perusal of paragraph Nos.3 to 7 of the Suit plaint are only required to be read to arrive at the cause of action and the relevant transaction documents are to be seen. Plaintiffs' case is that there is a registered Agreement for Sale dated 24.07.2014. That Agreement for Sale is placed before me in the additional compilation of documents filed by Defendant Nos.3 to 5. This compilation of documents runs into 194 pages. At page No.3 is the registered Agreement for Sale dated 24.07.2014. At page No.51 is the registered Sale Deed dated 28.06.2018. The above two documents are executed between Defendant No.2 and Plaintiffs. The Power of Attorney dated 07.02.2014 is appended at page No.60 of the compilation.

**13.** The registered Agreement for Sale executed between Defendant No.1 and Defendant Nos.3 to 5 dated 21.09.2016 is

appended at page No.131 whereas the registered Sale Deed dated 28.05.2018 between the same sparties is appended at page No.165 of the compilation.

**14.** I shall briefly refer to the contents of the above transactional documents between the parties herein above as they are stated in the Plaint leading to the cause of action to file the Suit.

**15.** It is seen that under the Agreement for Sale dated 24.07.2014, Plaintiffs have paid an amount of Rs.31,00,000/- which is the total of the 14 cash vouchers appended to the Agreement during registration. In the subsequent registered Sale Deed of Plaintiffs dated 28.06.2018 in clause 15, mere averment is made to the effect that Rs.69,00,000/- has been received by the Defendant No.1 from time to time. No further details are given.

**16.** Next, when the two transactional documents of Defendant Nos.3 to 5 with Defendant No.1 are seen, the same story repeats, rather in a more aggravated form. In the Agreement for Sale dated 21.09.2016 in clause 6, Defendant No.1 has specifically referred to the injunction order dated 30.06.2016 by recording the fact that there is a restraint on the Defendant No.1 to transfer the Suit property against which order the Appeal is pending in the District Court. Thus, Defendant No.1 and Defendant Nos.3 to 5 have clearly acknowledged the subsistence of the injunction order passed by the Civil Court in RCS



No.669 of 2015 in their first transactional document i.e. Agreement for Sale dated 21.09.2016. Hence, because the said document is not produced on record alongwith the Application below Order VII Rule 11, Defendant Nos.3 to 5 cannot make any virtue out of it. Further in the same document it is seen that in the terms and conditions below clause 8(g), Defendant No.1 has stated that she has not entered into any transaction with any person before execution of the said Agreement for Sale dated 21.09.2016. Thereafter in clause 9, the total consideration decided between the parties for sale of the Suit property is stated as Rs.2,15,00,000/- out of which on the date of the Agreement for Sale Rs.75,00,000/- was already paid to Defendant No.1. Out of this Rs.75,00,000/-, Rs.50,00,000/- was paid on 19.09.2016 by demand draft / pay order, but the balance Rs.25,00,000/- is seen to be paid by post dated cheque dated 19.11.2016 which is subsequent thereto.

**17.** As observed while delineating the facts, Defendant No.1 is not before the Court to confirm the receipt of the aforesaid amounts. However, when the Sale Deed between Defendant No.1 and Defendant Nos.3 to 5 is perused, it is seen that once again there is categorical reference to the injunction order passed in RCS No.669 of 2015 in paragraph No.6 of the Sale Deed. Thereafter in paragraph No.18, it is stated that Defendant No.1 has received the entire amount of Rs.2,15,00,000/- in entirety and she has no objection regarding the

transaction. It is further stated that there is an annexure appended to the said Sale Deed which records the receipt of the above total consideration of Rs.2,15,00,000/-. That annexure is at page No.174 of the compilation of documents. *Prima facie* perusal of clause 18 read with the annexure however presents a different picture. It is seen that there are 11 entries in that annexure of payment having been made to Defendant No.1. The Sale Deed is dated 28.05.2018. On the date of the Sale Deed, Defendant No.1 is given two cheques, each of Rs.2,50,000/- only. Whether the Defendant No.1 has received these amounts cannot be confirmed, as Defendant No.1 is not before the Court. Further, there are six entries of payment given to Defendant No.1 in the denomination of Rs.25,00,000/-, Rs.25,00,000/-, Rs.18,45,000/-, Rs.18,45,000/-, Rs.22,97,000/-, and Rs.22,98,000/- which adds upto Rs.1,32,85,000/-. It is once again by way of post dated cheques. This annexure is not in alignment with or in consonance with paragraph No.18 which refers to Defendant No.1 having received Rs.2,15,00,000.

**18.** In view of the above *prima facie* observations and findings on the basis of the four specific documents referred to in paragraph Nos.3 to 7 of the Suit plaint, it is clearly discernible that Plaintiffs have raised triable issues. The only exercise required to be done by the Court is to consider the Suit plaint and the documents referred to in the Suit plaint as they are. Apart from disputed questions of fact clearly

raised by the Plaintiffs, Defendant Nos.3 to 5 cannot claim to be entitled to have absolute legal ownership of the Suit property even on the basis of their own document namely registered Sale Deed dated 28.05.2018.

**19.** Whether on the basis of the aforesaid transactional documents, title has passed over to Defendant Nos.3 to 5 is *prima facie* not discernible and clear. If Defendant Nos.3 to 5's transactional documents refer to Sale consideration of Rs.2,15,00,000/-, the document itself refers to payment of Rs.1,32,85,000/- only, assuming that Defendant No.1 has received the said amounts by post dated cheques. Whether Defendant No. 1 has received these amounts can only be deciphered in the trial. Out of Rs.2,15,00,000/-, the document merely refers to the payment of Rs.1,32,85,000/- only and therefore Defendant Nos.3 to 5 cannot claim to be absolute owner of the Suit property. All the aforesaid issues and questions can only be answered in a trial. Plaintiff's case is based on their own twin documents namely registered Agreement for Sale dated 24.07.2014 and registered Sale Deed dated 28.06.2018. Plaintiffs have produced receipts of cash payment of Rs.31,00,000/- appended to the Agreement for Sale. In the Sale Deed, it is averred that balance Rs.69,00,000/- is also paid to Defendant No.1 by Plaintiffs. *Prima facie*, Plaintiffs have made out a case and cause of action because they are aggrieved by the subsequent registered Sale Deed dated 28.05.2018 in favour of Defendant Nos.3 to

5 despite the prevailing injunction order dated 30.06.2016 against Defendant No. 1.

**20.** The aforesaid facts are evident on a plain reading of the Suit plaint and the four registered transactional documents relied upon by Plaintiffs therein and appended to the Plaint.

**21.** The present case cannot be called as a case of clever drafting, rather the plaint in plain words in 4 paragraphs itself explain the above picture. Paragraph Nos.3 to 6 refers to the 4 transactional documents. The findings returned in the case of *Dahiben* (3<sup>rd</sup> *supra*) clearly aid the Court in looking at the averments made in the Suit plaint and *prima facie* deciding whether there is a cause of action made out therein or otherwise.

**22.** In that view of the matter and considering the provisions of Order VII Rule 11 of CPC, I am in complete agreement with the findings returned by the learned Trial Court in paragraph No.6 of the impugned order reproduced in paragraph No. 6 hereinabove. The impugned order dated 17.10.2019 passed in SCS No.851 of 2019 is upheld.

**23.** In view of the fact that the Suit is filed in the year 2018 and substantial time has lapsed thereafter, the learned Trial Court is directed by this Court to consider expediting hearing of the Suit proceedings.

**24.** It is clarified that the above observations and findings in this judgement are only made for the purpose of deciding the present CRA and are *prima facie* in nature.

**25.** All contentions of the Plaintiffs and Defendants before the Trial Court in respect of any observations and findings made herein above are expressly kept open to be agitated in the Suit proceedings by leading appropriate cogent evidence by the parties concerned.

**26.** The observations and finding in this order and the impugned order dated 17.10.2019 shall not influence the trial and the decision of the Trial Court in any manner whatsoever. The Suit shall be decided on its own merits and the evidence led by both the parties in the Trial Court.

**27.** Keeping all contentions of the Plaintiffs and Defendants expressly open, present CRA is dismissed in the above terms and disposed.

[ MILIND N. JADHAV, J. ]

Ajay

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TRAMBAK  
UGALMUGALE

Digitally signed by  
AJAY TRAMBAK  
UGALMUGALE  
Date: 2025.01.02  
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