

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.....OF 2023
(Arising out of S.L.P. (Civil) Nos. 4018-19 of 2023)

FUTURE SECTOR LAND DEVELOPERS
LLP & ANR.

... APPELLANT(S)

VERSUS

BAGMANE DEVELOPERS P. LTD. &
ORS. ETC.

...RESPONDENT(S)

J U D G M E N T

V. RAMASUBRAMANIAN, J.

Leave granted.

2. These appeals arise out of a common order passed by the High Court of Judicature at Bombay, allowing two revision applications that were directed against two separate orders passed on the same day by the 9th Joint Civil Judge, Senior Division, Pune, respectively in the applications filed under Order VII Rule 10 and Order VII Rule 11 CPC by some of the defendants in a suit.

3. We have heard Shri Shyam Divan, learned senior counsel appearing for the appellants and Shri Mukul Rohatgi, Shri K.V. Viswanathan, learned senior counsel appearing for the respondents who were the civil revision applicants before the High

Court. Shri Vikram Hegde, learned counsel accepts notice for defendant No.117 who was the applicant in the petition under Order VII Rule 11 CPC.

4. The appellants herein filed a civil suit on the file of the 9th Joint Civil Judge, Senior Division, Pune, against 141 defendants seeking various reliefs.

5. After service of summons, defendant Nos. 66, 67, 139 and 117 filed separate applications under Order VII Rule 10 CPC seeking the return of the plaint for presentation to the proper court, on the ground that the suit schedule properties are situate within the jurisdiction of the appropriate courts in Bengaluru.

6. Defendant No.117 filed one more application under Order VII Rule 11(a) and (d) CPC, seeking rejection of the plaint, contending that the court in Pune does not have territorial jurisdiction to grant reliefs in respect of immovable properties situate within the jurisdiction of the courts in Bengaluru and also that the suit is barred by the provisions of the Companies Act, 2013.

7. By two independent orders passed on the same date, namely, 22.4.2022, the Trial Court dismissed all the applications, filed both under Order VII Rule 10 and Order VII Rule 11 CPC.

8. Defendant Nos. 138 and 117 challenged the said orders of the Trial Court before the High Court of Judicature at Bombay in two civil revision applications.

9. By a common order dated 23.1.2023, the High Court allowed both the civil revision applications. It is against these orders that the plaintiffs have come up with the above appeals.

10. The appeal arising out of that portion of the impugned order where Civil Revision Application No.5 of 2023 filed by defendant No.117 was allowed, is capable of being disposed of without much ado. This is for the reason that the entire discussion and analysis in the impugned order, which commence from paragraph 12, revolve only around the provisions of Order VII Rule 10 CPC. But in the penultimate paragraph, the High Court has allowed both the civil revision applications. This has resulted in something which is a contradiction in terms. Once an application under Order VII Rule 11 is allowed, the plaint stands rejected and hence the question of presenting the same plaint before the appropriate court does not arise. Under Order VII Rule 13, the rejection of plaint on the grounds stated in the preceding Rules, shall not of its own force, preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Therefore, if a plaint is rejected under

Order VII Rule 11, the only remedy is to file a fresh plaint within the parameters of Order VII Rule 13 and the question of presenting the same plaint before the appropriate court does not arise.

11. But as it sometimes happens, the High Court has overlooked the obvious and allowed both the applications under Order VII Rule 10 and Order VII Rule 11 at one stroke. That the High Court did not have the intention to reject the plaint, is obvious from a reading of the penultimate paragraph of the impugned order, where the High Court has granted liberty to the plaintiffs to present the suit before the appropriate civil court at Bengaluru. But if the appellants-plaintiffs try to do that, a technical objection may be raised that the application under Order VII Rule 11 also stood allowed. This is apart from the fact that there is no discussion on Order VII Rule 11 in the impugned order. Therefore, that portion of the impugned order which states that both the civil revision applications stand allowed, requires modification.

12. That takes us to the more contentious issue revolving around Order VII Rule 10 CPC. As we have seen earlier, the foundation on which an application under Order VII Rule 10 was filed, was that the suit schedule property is situate within the jurisdiction of the City Civil Court, Bengaluru and that though the reliefs claimed are

substantially in respect of the immovable property, they are couched in a language, by clever drafting, to appear as though the reliefs relate to enforcement of rights in *personam*. Therefore, it is claimed that the plaint should be returned for presentation to the proper court.

13. The impugned order is assailed by Shri Shyam Divan, learned senior counsel appearing for the appellants-plaintiffs, primarily on the grounds: **(i)** that what is sought to be enforced in the suit are only contractual rights against the defendants; **(ii)** that the agreement between parties contain a recital conferring exclusive jurisdiction upon the civil courts in Pune; and **(iii)** that the appellants have been granted leave by the Trial Court under Order II Rule 2(3) CPC for seeking larger reliefs in respect of the suit properties at a later point of time. Therefore, he contends that the impugned orders of the High Court returning the plaint is clearly erroneous.

14. For finding an answer to the issue on hand, it may be necessary first to have a look at the plaint filed by the appellants herein. The gist of the averments contained in the plaint can be summarized as follows:

- i. That in November 2018, defendant Nos. 1 to 136 approached the plaintiffs with a proposal to sell two

- different sets of properties, one of which is situate at village Doddanekkundi, Varthur Hubli, Bangalore (East) Taluk, Bangalore Urban District and the other situate in village Mahadevapura, K.R. Puram, Hubli, Bangalore (East) Taluk, Bangalore Urban District;
- ii. That at the time of making the proposal, the owner-defendants (defendant Nos.1 to 136) represented that Bangalore Gorakshana Shala Society, which is defendant No.137 have been making claims over these properties on the strength of a transfer deed dated 7.4.1941 but the said transfer deed setup by defendant No.137 was sham and bogus;
 - iii. That the suit schedule properties described in Schedule-A and B to the plaint were purchased by one Giridharlal under registered sale deeds during the period from 1930 to 1939;
 - iv. That the said Giridharlal was survived by his only son Anraj, who died on 17.8.1960 leaving behind seven sons and a daughter;
 - v. That the purchase of these properties by Giridharlal was much before the formation of the Bangalore Gorakshana Shala Society;
 - vi. That according to the owner-defendants, defendant No.137 illegally executed two Memorandums of Understanding dated 30.8.2006 in favour of defendant No.138 in respect of a portion of the suit schedule properties and also received an amount of Rs.11,00,00,000/- (Rupees Eleven Crores only);

- vii. That some of the owner-defendants have already filed civil suits on the file of the appropriate courts in Bengaluru for various reliefs including the relief of injunction and the relief of partition;
- viii. That pursuant to certain interim orders passed in one of those suits, the Society had also deposited the amount of Rs.11,00,00,000/- (Rupees Eleven Crores only) in the City Civil Court, Bengaluru;
- ix. That there are two suits and one first appeal now pending in the courts in Bengaluru;
- x. That under the MoU/agreement dated 19.2.2019, the owner-defendants offered to sell and the appellants agreed to purchase a total extent of 87 acres and 27 Gunthas out of the total area of 93 Acres and 48 Gunthas, for a consideration of Rs.357,00,00,000 (Rupees Three Fifty-Seven Crores only);
- xi. That pursuant to the said MoU/agreement, the appellants-plaintiffs have paid, in the aggregate, an amount of Rs.14,12,82,369 (Rupees Fourteen Crore Twelve Lac Eighty-two Thousand Three Hundred and Sixty-nine only), on various dates;
- xii. That Clause 13.8 of the said MoU/agreement confers exclusive jurisdiction upon the courts in Pune to settle any claim or matter arising out of the MoU/agreement;
- xiii. That contrary to the covenants contained in the MoU/agreement, defendant Nos.44 and 49 executed a deed of confirmation dated 12.1.2021 in favour of Bangalore Gorakshana Shala Society, and the said deed

was also registered with the Office of the jurisdictional Sub-Registrar;

- xiv. That subsequently defendant No.27 executed a similar deed of confirmation on 16.4.2021 and defendant Nos.113 to 117 executed a similar deed of confirmation dated 4.5.2021 and they were registered with the jurisdictional Sub-Registrar;
- xv. That defendant Nos.65, 78, 85, 88, 73, 75, 76, 77, 87, 74, 69, 70, 71 and 72 have also registered a deed of confirmation dated 24.6.2020;
- xvi. That until the plaintiffs file a substantive suit for specific performance and possession, the owner-defendants are not entitled to prejudice the rights of the plaintiffs;
- xvii. That since a substantial suit for partition in O.S. No.8230 of 2007 is pending before the City Civil Court, Bengaluru, the appellants-plaintiffs may have to await the outcome of the said suit, to file a substantial suit claiming the relief of possession;
- xviii. That therefore until the plaintiffs could file a substantive suit, the owner-defendants should not be allowed to deal with the properties;
- xix. That the plaintiffs received two emails on 2.7.2021 enclosing scanned copies of two letters, by which two of the defendants claimed to have rescinded the agreement and revoked the power of attorney; and
- xx. That the deed of cancellation of power of attorney dated 11.6.2021 is unilateral and not binding on the plaintiffs and that therefore the plaintiffs are entitled to both

declaratory reliefs as well as injunctive reliefs against the defendants.

15. Before we proceed to deal with the contentions, it may be useful to extract paragraph 50 of the plaint filed by the appellants-plaintiffs, which contains the various reliefs sought in the suit.

Paragraph 50 of the plaint reads as follows:

“50. It is, therefore, prayed that –

a) The suit may kindly be decreed.

b) It may kindly be declared that the alleged deeds of Confirmation, dated 12/01/2021, 16/04/2021, 24/06/2020 and 04/05/2021, are illegal, null and void and not binding on the plaintiffs and ineffective, with respect to the suit properties and same may kindly be cancelled and concern office of registrar may kindly be directed to take note of such cancellation.

c) It may further be declared that the owners-defendants are not entitled to execute such deeds of confirmation or any other document/s with respect to the suit properties, in favour of the defendant No. 137 and 138 and/or in favour of any other third party, in view of execution of the agreement dated 19/02/2019 and contrary to the terms and conditions of the said agreement.

d) It be further declared that the Defendants No. 137 and 138 are not entitled to claim any right or ownership right on the basis of alleged deeds of confirmation, as stated in relief clause (a).

e) It may kindly be declared that the alleged letter dated 24th June 2021 and 25th June 2021 issued by concerned defendants and the documents of 'cancellation of power of attorney dated 11th June 2021, are illegal, null and void and same are brought into existence by the concerned defendants in collusion with each other, without the consent and knowledge of the Plaintiffs and therefore same are not binding on the Plaintiffs. It be further declared that

the such letter and document, is non-est in the eyes of law and hence liable to be ignored.

f) The alleged documents of cancellation of power of attorney dated 11th June 2021, may kindly be cancelled with further directions to the concerned office of registrar, to take note of such cancellation in their record.

g) The Defendants may kindly be restrained by decree of Permanent Injunction from executing any documents including Deed of Confirmation, Sale Deed, Agreement or entering into any kind of arrangement with the defendant No. 137 to 141 and/ or any third parties with respect to the suit properties.

h) The Defendants, either by themselves or through their agents, representatives or anybody claiming through them may kindly be restrained by decree of Permanent Injunction from transferring, alienating or creating the third-party interest of whatsoever nature with respect to the suit properties, or creating any right of whatsoever nature in favour of Defendants No. 137 and 141.

i) The defendants may kindly be restrained by decree of Permanent Injunction from using, acting upon or claiming any rights or raising any claim of whatsoever nature, on the basis of Deeds of Confirmation dated 12/01/2021, 16/04/2021, 4/05/2021 and 24/06/2020 or any other agreement/s, document/s or arrangement/s that may have been executed by the defendants inter se.

j) The defendants may kindly be restrained by decree of Permanent Injunction from using, acting upon or claiming any rights or raising any claim of whatsoever nature, on the basis of the alleged letter dated 24th June 2021, 25th June 2021 and the alleged documents of cancellation dated 11th June 2021.

k) The defendants may kindly be restrained from taking any steps contrary to the terms and conditions or causing the breach of the agreement dated 19/02/2019, thereby causing prejudice to the interest of the Plaintiffs arising out of the agreement dated 19/02/2019.

l) The owner Defendants may kindly be restrained by decree of permanent injunction from handing over possession of the suit properties to third party and/or to Defendant No. 137 to 141.

m) Temporary injunction in terms of prayer (g) to (l) may kindly be granted in favour of the plaintiffs.

n) Any other just and equitable relief in the interest of justice may kindly be passed.”

16. It may be noticed from the numerous reliefs sought by the appellants-plaintiffs in the suit that they are in the nature of both declaratory as well as injunctive reliefs. To be precise, the reliefs sought in paragraph 50(b) to (e) are in the nature of declaratory reliefs and those sought in paragraph 50(f) to (l) are in the nature of injunctive reliefs. Out of the four declaratory reliefs sought, two relate to certain documents such as the deeds of confirmation and deeds of cancellation of power of attorney. The other two declaratory reliefs are negative in nature.

17. Out of the seven prohibitory reliefs prayed for in paragraph 50(f) to (l), one is in the nature of a mandatory injunction, to direct the concerned parties to cancel the deed of revocation of power of attorney with a further direction to the concerned Office of the Sub-Registrar to take consequential action. Two of the prohibitory reliefs seek to injunct the defendants from, **(i)** executing any documents; **(ii)** entering into any arrangement with third parties; and **(iii)** transferring, alienating or creating third party interests with respect to the suit schedule properties. Two of the prohibitory

reliefs seek to injunct the respondents from asserting any right on the basis of the deeds of confirmation executed in favour of the Bangalore Gorakshana Shala Society. One prohibitory relief seeks to injunct the defendants from causing any breach of the Agreement dated 19.12.2019. ***The last of the prohibitory reliefs articulated in paragraph 50(l) of the plaint seeks to injunct the owner-defendants from parting with possession of the suit property to third parties and/or to defendant Nos.137 to 141.***

18. Before we analyse the reliefs sought in this suit a little more deeper, it is also necessary to take note of the addresses shown in the plaint for all the 141 defendants. As per the plaint, the places of residence of all the 141 defendants are spread over at least ten different States of India. While 2 of the defendants are from Madhya Pradesh, 34 defendants are from Karnataka, and about 46 defendants are from Maharashtra. Some of the defendants are from Tamil Nadu, some from Delhi, 2 of them are from Telangana, 3 of them are from Jharkhand and 2 are from Gujarat. There are 27 defendants residing in Guwahati/Assam.

19. *Therefore, it is clear that by instituting the present proceedings at Pune for temporary reliefs and reserving the*

right to institute a suit for substantial reliefs at Bengaluru at a later point of time, the appellants-plaintiffs want to take these 141 defendants residing in ten different States of India on a Bharat Darshan from Pune to Bengaluru.

20. The appellants-plaintiffs have repeatedly asserted before the Trial Court, the High Court as well as this Court that the reliefs sought in the plaint do not fall under any of the categories mentioned in Clauses (a) to (f) of Section 16 CPC and that all the reliefs can be obtained entirely through the personal obedience of the defendants, covered by the *proviso* to Section 16. But a careful look at the plaint would show that the appellants-plaintiffs have actually sought a relief in paragraph 50(l) to restrain the defendants from handing over possession of the suit properties to third parties or to defendant Nos.137 to 141. We have already extracted paragraph 50 of the plaint in entirety. ***The prayer in paragraph 50(l) is to restrain the owner-defendants by a decree of permanent injunction from handing over possession of the suit properties to third parties or to defendant Nos.137-141.***

21. Assuming that the appellants-plaintiffs succeed in getting a decree in terms of paragraph 50(l), the same has to be executed

primarily in terms of Order XXI Rule 32 CPC. But this will not enable them to recover possession of the suit schedule properties. If the appellants-plaintiffs had to seek recovery of possession, in the event of the decree in the present suit being disobeyed, the appellants will necessarily have to go to the court in Bengaluru.

22. It is seen from several portions of the plaint that the appellants have done a tight-rope walking to take refuge under Section 20(c) CPC by carefully avoiding any relief that may apparently appear to relate to Section 16(d) CPC. But obviously the plaintiffs have not been successful in this tight-rope walking, as we see quite a few falls/slips. For instance :-

- (i) In paragraph 2 of the plaint, the appellants have referred to the properties in dispute as “suit property” and have categorically stated that, “**the said properties are the subject matter of the present suit**”;
- (ii) In paragraph 4, the plaintiffs assert as follows, “...and it was further represented that, the said Society i.e., ***Defendant No.137 has no right, title, share and interest in any portion of the suit properties...***”; and
- (iii) In paragraph 38 of the plaint, the appellants have asserted that “...as per the documents on record, it is crystal clear that the ***Bangalore Gorakshan Shala Society and also Bagmane Construction Pvt. Ltd.***

have no right, title and interest with respect to the suit properties...”.

23. Thus it is clear, **(i)** that suit concerns immovable properties which are not just described in the plaint schedule by way of empty formality but are clearly stated to be the subject-matter of the suit; and **(ii)** that the plaintiffs are actually questioning the right, title and interest of the contesting defendants to the suit schedule properties.

24. Therefore, the High Court, in our considered opinion was right in holding that the suit falls under the category of one, for the determination of any right to or interest in immovable property covered by Section 16(d). The contention that even if Section 16 applies, the suit would be saved by the *proviso* to Section 16, is completely misplaced. At least one of the reliefs which relates to possession, may not fall under the *proviso* to Section 16.

25. Admittedly, there are two suits and a first appeal now pending on the file of the courts in Bengaluru, as seen from paragraph 7 of the plaint. Even according to the appellants, one of the suits is a partition suit. Actually, the appellants claim in paragraph 39 of the plaint that they would wait till the disposal of

the partition suit, for instituting a comprehensive suit for specific performance and possession.

26. In other words, the present suit filed by the appellants-plaintiffs is for preserving the subject-matter of the property through interim reliefs sought in the form of permanent injunction. The partition suit itself is of the year 2007 and we cannot lose sight of the ground reality that in most of the civil disputes, half the battle is won through interim orders. We do not think that the court should be a party to the practice of allowing a litigant to use one court for the purpose of temporary reliefs and another court for permanent reliefs.

27. There is one more aspect. The plaint does not even show the particulars of the Office of the Registrar where the deeds of confirmation were registered and the deeds of power of attorney were registered and subsequently cancelled. Though a relief is sought to direct the Registrar to cancel the deeds of revocation of power of attorney, the details of the Office of the Registrar are not provided and he is also not made a party. We do not know if the concerned Registrar with whom the deeds of confirmation were registered and the deeds of power of attorney and their cancellation were registered, is at Pune or Bengaluru.

28. In fact, the categorical assertion of the appellants-plaintiffs in paragraph 38 of the plaint that Bangalore Gorakshana Shala Society and Bagmane Construction Pvt. Ltd. have no right, title and interest over the suit properties, would make it necessary for the court at Pune to embark upon an inquiry about the right, title and interest of either of the parties to the suit properties. Therefore, the High Court was right in concluding that the suit is covered by Section 16(d) CPC.

29. It is true that the Trial Court has granted leave to the appellants in terms of Order II Rule 2(3) CPC, to file a substantial suit for specific performance and possession at a later point of time. That does not mean that the rights of the defendants to seek the return of the plaint can be curtailed.

30. In view of the above, we hold that the order passed by the High Court in the civil revision application arising out of the applications under Order VII Rule 10 CPC does not call for any interference. However, as we have stated earlier, one portion of the impugned order by which the other application under Order VII Rule 11 CPC stands allowed, perhaps by way of inadvertence, is liable to be set aside.

31. Therefore, the appeals are partly allowed, setting aside that portion of the impugned order where the application of defendant No.117 filed under Order VII Rule 11 CPC stands allowed. The other portion of the impugned order allowing the applications of the defendants filed under Order VII Rule 10 stands confirmed. It is open to the appellants to represent the plaint before the jurisdictional court at Bengaluru, within a period of four weeks.

32. Pending application(s), if any, stands disposed of accordingly.

.....**J.**
(V. RAMASUBRAMANIAN)

.....**J.**
(PANKAJ MITHAL)

New Delhi;
March 02, 2023