

UTDD010003422014



Presented on : 20/06/2014
Registered on : 20/06/2014
Decided : 15/12/2023
Duration : 9Y 05M 25D

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
DAMAN.

(Presided over by Shridhar M. Bhosale)

Reg. Civil Appeal No.02/2014

Exh.No.13

Supreme Company Ltd.,
A Company duly registered under
the provision of Companies Act,
Having its registered office at 'Pragati'
Shopping Center Kadar Marg,
Nani Daman.

.....

Appellant

V/s.

1. Shri. Gopal Bhula,
Age : Adult, Occ. Agriculturist,
R/o. Talar Falia, Dabhel,
Nani Daman.
2. Shri. Jagdish Kanji Damania,
Age : Adult, Occ.: Business,
R/o. Kathiria Bhandarwad,
Opp. Dr. Paresh Clinic, Tin Batti Chowk,
Nani Daman – 396 210

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Respondents

Appearance

Smt. Alpha C. Rathod, Adv. for the appellant.

Ex parte proceeded against the respondents.

J U D G M E N T

(Delivered on 15th day of December, 2023)

1] This is an appeal by original plaintiff being aggrieved with the judgment and decree dtd.05.04.2014 in Special Civil Suit No.46/2012 by Civil Judge, Senior Division, Daman.

2] In short, the appellant was partnership firm and in the year 1995 it was converted into a company under the provision of Indian Companies Act and thereby all the assets and liabilities of erstwhile partnership firm M/s. Supreme Company is duly transferred and vested into the appellant. The respondent no.1 is owner of land bearing S.No.476/3 admeasuring 500 sq.mts. situated at village Dabhel, Nani Daman (hereinafter referred as 'suit property'). The suit property is now part of the plot no.28 and 29 created in the subdivision layout duly sanctioned by the Town Planning Department and Dabhel Group Gram Panchayat. It is contended that in the subdivision area, the appellant has developed industrial estate under the name 'Diamond Industrial Estate'.

3] In the year 1993, respondent no.1 approached to plaintiff through respondent no.2, his general power of attorney holder and agreed to sale the propose land for the price of Rs.100/- per sq.mts. Accordingly, an agreement for sale dtd. 18.03.1993 for the suit land and adjacent land has been executed and registered in the office of Sub-Registrar. According to the

appellant, it was agreed that the respondent no.1 shall obtain sale permission of the Collector, Daman and after such permission is obtained, respondents shall pay Najrana and intimate to appellant for getting execute the sale-deed. On 29.03.1993 the respondents came to the office of appellant and discussed about the payment of balance consideration, execution and registration of sale-deed. In the said meeting it was agreed that part earnest money is received by respondent no.2, the respondent no.1 will pay full consideration amount of Rs.100/- per sq.mts. amounting to Rs.50,000 towards the sale of suit land and on the same day, the appellant had paid Rs.50,000/- by cheque. The said cheque was encashed by respondent no.1.

4] It is further stated that the possession of suit land was handed over to the appellant by the respondents with right to develop and deal with the said property and also necessary power of attorney was given to the representative of the appellant. Thereafter, the appellant amalgamated the land of respondent no.1 with other adjacent lands purchased by appellant and has sub-divided it into different plot with the permission granted by Dabhel Group Gram Panchayat and on recommendation of department of planning and architecture by its order dtd. 02.04.1993. Thus, the suit land is now part of the plot no.28 and 29. Moreover, the appellant also constructed barbed wire fencing around all the lands included in the sub-division plan and developed internal roads and constructed 4-5 industrial buildings as per approved plan approved by Dabhel Group Gram Panchayat, and thus recommendation of the department of planning and architecture vide order dtd. 30.04.1993. Further, the

appellant has created third party interest in some of the properties under the authority derived under the power of attorney and respondent no.1 never objected for the development of industrial estate over the number of lands including the suit property.

5] It is contended that respondent no.2 filed an application to the Collector, Daman for issuing N.A and sale permission. The Collector, Daman issued N.A. Sanad and sale permission by order dtd.08.04.1993 for the suit property and other adjacent land almost in area purchased by the appellant. It is contended that at the relevant time as per the provisions of Abolition Regulation, nazarana was required to be paid after obtaining sale permission. The respondents attempted to obtain challan for paying nazarana. However, the office of Collector raised dispute claiming that land purchased by appellant or not falling within the industrial zone as earmarked in the regional plan of district of Daman. It is contended that however in fact town planning department has recommended NA permission to Collector, Daman by interpreting the said lands are falling within the industrial zone. However, the Collector, Daman took illegal action and passed order dtd. 08.06.1993 keeping the NA permission dtd. 08.04.1993 in abeyance. Thereafter, it was decided to challenge the said order of Collector, Daman, and hence Writ Petition No.3272/1993 was filed by respondent no.1 through its power of attorney holder respondent no.2 before the Hon'ble High Court Judicature at Bombay. The said Writ Petition was dismissed by order dtd. 06.09.1993 declaring that NA permission cannot be kept in abeyance nor any order issued for stopping building construction. Consequently the Collector illegally initiated the proceeding to review NA permission granted in the said land and similar lands in the same

locality and threatened to disconnect the electricity supply given to the industrial gala and buildings constructed in the industrial area. Therefore, the respondent again filed Writ Petition No.3440/1994 in the Hon'ble High Court. The Hon'ble High Court passed ad-interim order and electric supply was restored and said execution and implementation order of the Collector. However, on 05.12.2005 the said Writ Petition came to be disposed off as infructuous.

6] It is further contended that one of the director of appellant's company Khan Mohammed Aslam died on 17.12.2004 who was looking after this matter and the respondents were aware of it. Therefore, there were change of residence of director of appellant's company from Daman to Mumbai and Pune. It is contended that when the order was passed by the Hon'ble High Court on 05.12.2005 the process of revising the existing regional plan was already in a draft plan and the respondents land and other land beyond the suit land were proposed to be included in industrial zone. Therefore, it was considered by the appellant and respondents not to have further litigation in respect of the review and canceled NA permission. Consequently, on 12.07.2007 the administration approved the revised regional plan and now the suit lands are falling within the industrial zone and a new NA permissible can be obtained. Therefore, again appellant approached the respondent no.2 on 03.03.2008 and requested in writing as to how and in what manner he intent to file fresh NA permission to Collector, Daman. Thereafter, there were number of correspondence between the appellant and respondent no.2 and after legal opinion was obtained it was decided that there is no need to file review petition in the Hon'ble High Court but should

approach to Collector, Daman for fresh NA permission and sale permission.

7] However, respondent no.2 have shown reluctance and by writing letter dtd. 18.11.2011 informed the appellant to direct approach the concerned land owners in the manner. The appellant also requested that the respondent no.2 to furnish certain details by letter dtd. 25.02.2012, but the respondents has expressed inability to provide certain information. It is contended that the appellant has informed the respondents that the appellant has been ready and willing to perform their part of contract which he already perform by paying full consideration and receiving possession from the respondents and the respondents also ready and willing to perform part of contract, therefore it is necessary the respondent to express willingness to apply for NA permission and subsequently to obtain permission to execute the sale-deed. Hence, the appellant has also sent a letter dtd. 05.06.2012 to respondent no.1 requesting to apply for NA permission within 15 days of the receipt of letter. However, despite of receipt of letter neither replied nor sent any copy of NA permission application. Hence, the appellant through his advocate sent a notice to respondent no.1 dtd. 02.07.2012 intimating that respondent no.1 to apply for NA permission. The respondent no.1 did not receive the said notice and manage to return with remarks 'not known'. Moreover, he has not send copy of NA permission application filed by them, and thus respondent no.1 refused to perform his part of contract after receipt of notice dtd. 02.07.2012. It is contended that as the suit property now included in industrial zone it fetch high price of Rs.2250/- per sq.mts. and hence respondent no.1 has dishonest intention to extract more money from the appellant.

Further, the appellant came to know on local inquiry that respondent no.1 had started contacting perspective purchaser and illegally intending to sell the suit property to them @ more than Rs.2250/- per sq.mts. Therefore, on these all counts the suit came to be filed for specific performance of agreement dtd. 18.03.1993 in respect of suit land.

8] The respondents were duly served. However, respondent no.1 did not appear. Whereas respondent no.2 filed written statement and admitted the allegations made by the appellant.

9] To prove the claim on behalf of appellant, Shri. C. Muthiah was examined. Then Ld. CJSD, Daman after hearing both the parties and considering the evidence observed that the evidence of appellant is not sufficient to prove execution of agreement to sale and power of attorney as witness was not present at the time of execution of alleged documents. Further, it has been observed that the respondents in order to pay Najrana but due to objection raised by Government office they could not pay Najrana and thus respondents have not effected performance of contract in respect of NA permission. It has been observed that there is no such consideration in the alleged agreement of sale. On all these counts it has been further observed that the appellant is not entitled for relief of specific performance and injunction, and dismiss the suit.

10] Being aggrieved with the judgment and decree the present appeal came to be filed.

11] In response to the notice both respondents did not appear. Heard. Ld. advocate Smt. Alpha C. Rathod for the appellant. Perused the written notes of argument.

12] Following points arose for my consideration. My finding thereon, followed by reason, thereof are as under;

Sr. No.	POINTS	FINDINGS
1.	Whether respondent no.1 and 2 have executed an agreement for sale dtd. 18.03.1993 ?	Yes.
2.	Whether the appellant is entitled for relief of specific amount of agreement of sale and permanent injunction ?	Only for perpetual injunction.
3.	Whether any interference is required by this Court in judgment and decree dtd. 05.04.2014 in Spl.Civil Suit No.46/2012 by Civil Judge, Senior Division, Daman ?	Yes, only in respect of relief of injunction.
4.	What order.	As per final order.

REASONS

AS TO POINT NOS.1 TO 3 :-

13] The Ld. advocate for the appellant vehemently submitted that the respondent no.2, a power of attorney holder of respondent no.1 and he participated in the said transfer and executed agreement to sale and admitted the execution and contents of agreement to sale power of attorney. Therefore, the observation of Ld. judge that the appellant has not proved execution of agreement to sale is not

proper. It is further submitted that after including property in industrial zone the appellant has requested to obtain to sale permission and pay nazrana. However, the respondents failed to perform their part of contract. It is submitted that earlier sale permission was granted by Dy. Collector, Daman where was cease to exist on the review of the same and after the suit property put into industrial zone and there was no necessity for separate NA permission and it was obligatory part of respondents to execute sale of agreement as already consideration was received.

14] It is further submitted that the respondent no.2 is holding power of attorney of respondent no.1 which is duly notarized on 14.03.1993 and thereafter respondent no.2 sublet authority by executing power of attorney to partner of appellant company which is duly registered on 18.03.1993. It is submitted that both the power of attorney and irrevocable power of attorney and there was specific authorization by respondent no.1 to respondent no.2 to sale or transfer the said suit property and to receive consideration money in connection with it. Therefore, respondent no.2 in the capacity of power of attorney holder of respondent no.1, after executed irrevocable power of attorney in favour of partner of appellant company which is duly registered and empower the partner of the appellant company also to execute the sale-deed and therefore, the execution of further agreement to sale is legal and proper.

15] Ld. advocate for the appellant vehemently submitted that Sec.17 (1) of Registration Act provides list of documents which required mandatory registration. Whereas Sec.18 deals with the documents which may be registered that means registration become

mandatory for the documents under Sec.18 of Registration Act. He submitted that as the Registration Act there is no any specific provisions for registration for power of attorney, hence strictly the provisions of Sec.17 (1) of registration could not be applicable and therefore the said documents is legal. In support of her argument she placed reliance in case of Suraj Lamps & Industries Pvt. Ltd. V/s. State of Haryana, AIR 2012 SC 206.

16] It is worth to note that the respondent no.1 who is owner of the suit property did not appear before Ld. CJSD, Daman to contest the suit nor he appeared in this appeal. Whereas respondent no.2 power of attorney holder of respondent no.1 by filing his written statement though admitted execution of the agreement and power of attorney, but not availed an opportunity to cross-examine Shri. Khan Mohammed Aslam a witness of appellant. Ld. trial Court has lost sight that pleading of the appellant had gone unchallenged from the side of respondent no.1 as he did not appear and filed written statement. Moreover, though the respondent no.2 appeared and filed reply has categorically admitted all the contents of the plaint except the fact of knowledge of information about ready and willing to perform part of the duty. Moreover, even during the cross-examination of PW1 Muthaia a authorized representative of appellant company, except the fact that he is working with the company since 1989, there was no any challenge to the version of witness about execution of the power of attorney by respondent no.1 in favour of respondent no.2, and thereafter executing a power of attorney by respondent no.2 in favour of one of person of appellant company and then by executing an agreement to sale by said person of the company. Therefore, the findings of Ld. CJSD that respondent no.1

was not present at the time of execution of alleged documents and hence it could not be said that the sale in respect of the suit property, is erroneous.

17] However, on consideration of the agreement to sale with the findings recorded by Ld. Judge, it has been rightly observed that though there was reply to obtain the sale permission of the Collector by the respondents and to pay nazrana and intimate to the appellant for preparing and executing sale-deed, however due to objection by Government he failed to do so. Therefore, it cannot be said that the himself respondents avoided to comply one of the condition of obtaining sale permission from the Collector and to pay Nazrana. Further, it could be also seen that there was no recital in agreement which point upon the respondents to obtain the NA permission. Therefore, it could not be said that the respondents did not perform his part of the contract to seek a specific performance. It is the purchaser who has to show his readiness and willingness to perform his part of contract, thus from the oral as well as documentary, it could be well concluded that the appellant was ready and willing to perform his part of contract at any time.

18] The material question is now whether the agreement for sale dtd. 18.03.1993 executed by Jagdish Damania a power of attorney holder of respondent no.1 could be directed to execute sale-deed of the suit property on behalf of respondent no.1. Admittedly, the power of attorney dtd. 14.03.1993 executed by respondent no.1 in favour of respondent no.2 by which a power was given to sale or transfer or concur by selling the suit property was notarized and not duly registered. No doubt, the power of attorney dtd. 18.03.1993

executed by respondent no.1 in favour of respondent no.2 who has got power by virtue of power of attorney dtd. 17.03.1993 in favour of Khan Mohmed Aslam also authorized him to sale the said property and execute sale-deed in respect thereof on his behalf. However, agreement to sale Ex.26 dtd. 18.03.1993 which appellant seek to get perform from respondent no.1 was executed by respondent no.2 on behalf of respondent no.1 as power of attorney holder.

19] Sec. 32 of the Registration Act deals with the person to present document for registration. It speaks that except in the cases mentioned in 31, 88, 89 every document to be registered whether such registration be compulsory or optional, shall be presented at the proper registration office by some person executing or claiming under the same, or by representative or assign of such person, or by the agent of the such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner mentioned in the above Act. Sec.33 of the Registration Act which is deal with power of attorney recognizable for purposes of Sec.32. It has given three category. Our case follow in the first category i.e. principal at the time of execution of power of attorney resides in any part in India in which Registration Act is any time in force, a power of attorney executed before an authorized by Registrar of Sub-Registrar within whose district and Sub-District principle reside. Thus, for the purpose registration of agreement to sale which follow within the category of Sec.32 of Registration Act, as per the provision of Sub-Clause (a) of Sec.(1) of Sec.33 of Registration Act, the power of attorney is required to be duly registered.

20] Very recently, the Hon'ble Supreme Court of India in a judgment dtd. 01.11.2023 in Civil Appeal No. 1598 of 2023 in case of Shakeel Ahmed V/s. Syed Akhlaq Hussain, after considering the judgment of Suraj Lamps & Industries, Supra observed in para 10, 11, 12 & 13, it read thus;

10; Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.

11. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the case of Suraj Lamps & Industries (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court: (i). Ameer Minhaj Vs. Deirdre Elizabeth (Wright) Issar and Others² (ii). Balram Singh Vs. Kelo Devi³ (iii). M/S Paul Rubber Industries Private Limited Vs. Amit Chand Mitra & Anr. 4.

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents

with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.

21] Therefore, in my considered opinion, as power of attorney Ex.24 was not duly registered, he was not having any power to sale the property legally to appellant, therefore such agreement to sale Ex.27 cannot be authorized to perform under the law. Hence, relief for specific performance cannot be granted.

22] The appellant has also sought perpetual injunction to restrain the respondent to restrain from disturbing the possession of suit property. On consideration of the pleadings of both the party and unchallenged evidence as well as the agreement to sale with permission of Dabhel Group Gram Panchayat dtd. 25.05.1993 of factory building plant by officer of the architecture Ex.31 and Sanad Ex.32, it could be gathered that the appellant is in possession over the suit property. The appellant's contention in the plaint at part 5 and 6 has gone totally unchallenged. Therefore, in these situation the only remedy available for the respondents was not to disturb the suit possession without due process of law. However, Ld. trial Judge has not gave any findings on the point of possession and the relief of injunction, sought by the appellant. Thus, to that extent the order of Ld. Civil Judge, Senior Division, Daman is required to be modified and accordingly I pass following order.

ORDER

1. The appeal is partly allowed.
2. The relief of appellant for specific performance of agreement to sale dtd. 18/03/1993 is hereby dismissed.
3. The respondents are by way of perpetual injunction restrained to disturb possession of appellant over the suit property without following due process of law.
4. No order as to costs.
5. Decree be drawn up accordingly.
6. R & P sent back to trial Court.

Date: 15/12/2023.
Place:Daman.

(Shridhar M. Bhosale)
Principal District Judge,
Daman.

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment/order are same, word to word, as per the original Judgment/order.

Name of the Stenographer	:	Dhiraj Gajbhiye, Stenographer (H.G.)
Court	:	District & Sessions Court, Diu
Date	:	15.12.2023
Judgment/Order signed by the Presiding Officer on	:	15.12.2023
Judgment/Order uploaded on	:	15.12.2023