
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.962 of 2022

Minal Enterprises .. Appellant

Versus

Madhoor Realtors Pvt.Ltd. & Ors. .. Respondents

*Mr.Ramesh D. Soni a/w Mr.Tushar R. Momaiyah i/b M/s.Ram & Co.,
AdvocateS for the Appellant.*

*Mr. Ranjit Thorat, Senior Advocate a/w Mr.Kishor Patil a/w Ms.Pratiba
Hake Patil a/w Mr.Chetan A. Alai a/w Mr.Pandit Kasar a/w Ms.Rama
Somani a/w Mr. Rishabh Chaurasia i/b Mr. Pandit Pawar i/b Mr.Chetan A.
Alai, Advocates for the Respondents.*

CORAM: FIRDOSH P. POONIWALLA, J.
RESERVED ON: DECEMBER 11, 2025
PRONOUNCED ON: JUNE 9, 2026

JUDGEMENT:

1. The present Appeal from Order (AO) is filed challenging the Order dated 8th September 2022 passed by the Court of the Extra Joint Civil Judge (Senior Division), Nashik, rejecting the Exhibit 5 Application of the Appellant (Plaintiff) filed in Special Civil Suit No.182 of 2019.

FACTS

- 2.** The facts of the case are as follows:
- a. By an Agreement for Sale dated 10th April 1986 executed by the original owners in favour of the Appellant, they agreed to sell to the Appellant Survey No.32 of Nashik, admeasuring 11 acres (on the south side of the canal). The suit property is a portion thereof admeasuring 3890 Sq. metres.
 - b. A Power of Attorney dated 10th April 1986 was also executed by the owners in favour of the Appellant and others authorizing them to act on behalf of the owners for developing the entire property of 11 acres on the south side of the canal.
 - c. On 10th April 1986, a tentative layout for the entire property admeasuring 42932 sq.mtrs., including the suit property, was sanctioned by the Nashik Municipal Corporation pursuant to the plans submitted by the Appellant.

d. On 15th October 1987, Special Civil Suit No.428 of 1987 was filed by the Appellant and others against the original owners for specific performance of the Agreement for Sale dated 10th April 1986.

e. On 12th November 1987, permission was granted by the Divisional Commissioner, Nashik, for transfer of the said entire land admeasuring 42932 sq.mtrs. (11 acres), including the suit property, in favour of the Appellant, and for permitting the non agricultural user thereof. The Appellant paid Nazrana amount of Rs.4,02,488/- for the said conversion.

f. On 14th January 1991, Special Civil Suit No.428 of 1987 was compromised between the parties and the owners agreed to convey the entire property, including the suit property, to the Appellant and others. The Court passed the Compromise Decree accordingly.

g. Special Civil Suit No.54 of 1991 and Regular Civil Suit No.117 of 1991 were filed by one Vaibhav Construction and Others against the original owners in respect of the suit property

admeasuring 3890 sq.mtrs. An ad-interim temporary injunction was granted against the original owners in respect of the suit property. On 26th April 1991, the order of temporary injunction was vacated by the Court.

h. The owners executed an additional irrevocable Power of Attorney in respect of the entire property of 11 acres on the south side of the canal, including the suit property, in favour of the partners of the Appellant (the Appellant was earlier a partnership and is now a sole proprietorship firm) to do all such acts for developing the said property which was agreed to be conveyed to the Appellant and others by the owners.

i. On 28th August 1991, an Order under Section 8(4) of the Urban Land Ceiling Act, 1976, was issued by the Deputy Collector and Competent Authority, Urban Land Ceiling, Nashik, as regards the holding of the original owners.

j. Two registered Sale Deeds dated 13th May 1991 were executed by the original owners in favour of the Appellant and/or their nominees. Although the Sale Deeds excluded the suit property, it was also mentioned therein that the entire

consideration of the said property, including the suit property, was received by the owners and possession was also given to the Appellant and others.

k. On 27th December 1991, an NA order was issued by the Collector Nashik. The Nazrana amount was paid by the Appellant for the entire land, including the suit property.

l. On 14th February 1992, the final layout was sanctioned by the Nashik Municipal Corporation for the entire area. However, the suit property was separately earmarked in the said layout under the remark, “the retention kept pending”, due to the fact that the suit mentioned hereinabove was pending at the relevant time.

m. It is the case of the Appellant that the sanction for the portion comprising of the suit property was kept pending only due to the pendency of the suit and that the ownership and possession of the Appellant in respect of the suit property was never questioned.

n. On 2nd December 1992, pursuant to an Application made by the Appellant to the DILR, a demarcation plan was prepared by the DILR in respect of the entire property purchased by the Plaintiff, being Survey No.32, of which the suit property was a part.

o. On 1st December 1992 another Order was passed under Section 8(4) of the Urban Land Ceiling Act, 1976 by the Competent Authority, Urban Land Ceiling, Nashik, in respect of the holding of the original owners, which included the suit property.

p. On 14th June 1993, a tentative layout plan was submitted by the Appellant to the Nashik Municipal Corporation in respect of the suit property, which was kept pending in the earlier layout due to the pending Civil Suit, and which was sanctioned due to the vacating of the stay orders.

q. On 1st October 1996, the Appellant again approached the DILR to get a fresh measurement demarcated sketch in respect of the suit property, which was kept pending due to the Court orders.

r. On 6th December 2018, a public notice appeared in the newspaper for verification of title of the suit property proposed to be purchased by the Respondents.

s. By his Advocate's letter dated 12th December 2018, the Appellant objected to the proposed transaction and asserted that he was the owner of, and in possession, of the suit property.

t. Even before the said public notice was issued on 6th December 2018, Respondent No.3, acting on an alleged Power of Attorney given by the owners, executed a Sale Deed in favour of Respondent No.1 in respect of an area of 3654 sq.mtrs, which is a portion of the suit property. It is the case of the Appellant that the said Sale Deed was executed on the basis of a Power of Attorney given by the owners in respect of another property which was fully developed and sold by Respondent No.3 on 2nd September 2010. The Power of Attorney was misused by Respondent No.3. The said Power of Attorney was in respect of 8055 sq.mtrs of land which was on the north side of the canal whereas the suit property is on the south side of the canal. It is the case of the Appellant that the Sale Deed, on the face of it, is

bogus, in as much as apart from there being no authority to sell, even the consideration was being paid by post dated cheques.

u. FIR No.I-37 of 2021 dated 18th February 2021 and FIR No.I-175 of 2021 dated 17th November 2021 was lodged against Respondent No.3. It is the case of the Appellant that, in the investigation, it has come on record that Respondent No.3 had used three different Powers of Attorney, which are forged in respect of the suit property. Pursuant to the said FIR Respondent No.3 was arrested.

v. It is the case of the Appellant that the original owners had executed a Development Agreement and General Power of Attorney in favour of Respondent No.3 only in respect of land admeasuring 8055 sq.mtrs., which is on the north side of the canal. The said portion is fully developed by Respondent No.3 and sold. Respondent No.3, however, misused the said Power of Attorney for the purpose of executing a bogus Sale Deed in respect of the suit property, which was already sold to the Appellant and which is on the south side of the canal.

w. In these circumstances, the Appellant filed the present Suit, being S.C.S No.182 of 2019, on 23rd April 2019. In the Suit, the Appellant filed an Exhibit 5 Application seeking interim reliefs. The said Exhibit 5 Application was rejected by the impugned Order dated 8th September 2022. Hence, the present Appeal is filed by the Appellant.

SUBMISSIONS OF THE PARTIES

3. Mr.Soni, the learned counsel appearing on behalf of the Appellant, submitted that the impugned Order was passed without any finding on *prima facie* case, balance of convenience and irreparable loss. The Learned Judge, while deciding the Application for interim injunction, has observed 'neither of the parties' in respect of the points as to whether the Appellant had proved a prima facie case in his favour and in respect of in whose favour the balance of convenience lies. Further, the Learned Judge had observed "does not survive" in the context of the point as to whether irreparable loss would be caused by grant of injunction than that of its refusal.

4. Mr.Soni submitted that the impugned order is erroneous in as much as it does not give any finding on any of the ingredients required to be considered in an Application for interim injunction under Order 39 of the Code of Civil Procedure, 1908 (CPC). Mr.Soni submitted that, thus, the Learned Judge had failed to exercise his jurisdiction under the provisions of the CPC.

5. Next, Mr.Soni submitted that the Appellant is claiming the property under an Agreement for Sale dated 10th April 1986 and the compromise decree passed in respect thereof. Mr.Soni submitted that the compromise filed by the parties in the said Suit clearly acknowledged that the Appellant had paid and the owner had received the entire consideration for the property agreed to be sold to the Appellant, including the suit property, and that possession thereof was also handed over to the Appellant.

6. Mr.Soni submitted that there was no dispute about the same between the Appellant and the original owners till date.

7. Mr.Soni submitted that the original owners had executed a Development Agreement with Power of Attorney in favour of Respondent No.3 in respect of a totally separate land admeasuring 8055 sq. meters on the north side of the canal. The said land is fully developed and sold by

Respondent No.3. Respondent No.3, by misusing the NA order in respect of the land admeasuring 8055 sq. meters on the north side of the canal, fraudulently got the revenue record in respect of his land rectified by including the suit property.

8. Further, Mr.Soni submitted that Respondent No.3, being aware of the fact that the suit property did not belong to him, executed a bogus Sale Deed without consideration in favour of Respondent No.1 wherein he is the signatory both as a vendor and a purchaser. The public notice for verification of title was issued on 6th December 2018 whereas the Sale Deed was executed prior thereto on 24th July 2018.

9. Next, Mr.Soni submitted that the Appellant has acted on the Agreement for Sale and the Compromise Decree passed in the suit for specific performance as also on the power of Attorney executed by the original owner in favour of the Appellant in respect of the suit property. The Appellant has paid the entire consideration and is put in possession of the suit property. The Appellant has obtained NA orders and has also submitted and got sanctioned layout plans from the Nashik Municipal Corporation in respect of the suit property and has paid all the necessary charges and premium for the same.

10. Mr.Soni submitted that the original owner has throughout acknowledged the ownership and the rights of the Plaintiff to the suit property and even today confirms the same. The original owner and the Appellant are both aware of and have acted upon the Compromise Decree.

11. Further, Mr.Soni submitted that, on the complaint filed by the Tahsildar, FIR, being FIR No. 1-175 of 2021, dated 17th November 2021, was registered against Respondent No.3 in the Satpur police station for offences under Sections 420, 467, 468, 193(2), 199, 200 R/w Section 34 of the Indian Penal Code, 1860. The original owners have given statements before the Investigating Officer to the effect that they had never executed a Power of Attorney for the suit property in favour of Respondent No.3 and that the said land was already sold to the Appellant. Further, Mr.Soni submitted that the Powers of Attorney used by Respondent No.3 to execute the Sale deed in favour of Respondent No.1 were forged and fabricated and was not issued by the original owners.

12. Mr.Soni submitted that the Appellant has thus made out a more than strong prima facie case for grant of interim relief in his favour. The balance of convenience is also in the favour of the Appellant. The Respondents, having acted on and having created bogus documents by forging and fabricating the record, cannot claim any rights under the bogus

Sale Deed. Mr.Soni submitted that it is in these circumstances that the Appellant was entitled to the interim relief sought by him.

13. On the other hand, Mr.Ranjit Thorat, the learned Senior Advocate appearing on behalf of the Respondents, supported the impugned Order dated 8th September 2022 and submitted that the present AO should be rejected.

14. Mr.Thorat submitted that the Compromise Decree records that the suit property had to be retained. The Suit in respect of the retained area was disposed of on 18th October 1994. Hence, the Appellant had to execute the Compromise Decree. Mr.Thorat submitted that the present Suit is misconceived as, instead of filing the present Suit, the Appellant ought to have executed the Compromise Decree. Mr.Thorat submitted that, on this ground alone, no reliefs can be granted in the present Suit.

15. Further, Mr.Thorat submitted that in the Suit, the Appellant has sought the relief of cancellation of Sale Deed dated 24th July 2018. Mr.Thorat submitted that this relief of cancellation had to be sought by the owner of the suit property and not by the Appellant.

16. Further, Mr.Thorat referred to paragraphs 25, 26 and 27 of the impugned Order and submitted that the findings of the Learned Judge on non-joinder of parties is correct and, therefore, the Learned Judge has correctly rejected the Exhibit 5 Application filed by the Appellant for interim reliefs.

17. Mr.Thorat further submitted that the present suit, which is based on the Compromise Decree dated 14th January 1991, is barred by limitation.

18. Further, Mr.Thorat also referred to paragraph 30 of the impugned Order and submitted that the Learned Judge has rightly held that the Appellant was required to execute the Compromise Decree, and in the absence of the Appellant executing the Compromise Decree, Application under Exhibit 5 cannot be granted.

19. In support of his submissions, Mr.Thorat also relied upon the judgement of the Hon'ble Supreme Court in **Anathula Sudhakar vs. P.Buchi Reddy (Dead) by LRs. And Others (2008) 4 SCC 594.**

ANALYSIS AND FINDINGS

20. I will first deal with the issue of limitation. The Respondents have contended that the present Suit is barred by the law of limitation. The present Suit is filed for the cancellation of the Sale Deed dated 24th July 2018 and for the reliefs consequential thereto. Article 59 of the Limitation Act, 1963 provides that, for a suit to cancel or set aside a instrument or decree, or for rescinding a contract, the period of limitation is three years from when the facts entitling the Plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first became known to the Plaintiff.

21. In the present case, even assuming that the facts entitling the Plaintiff to have the Sale Deed dated 24th July 2018 cancelled became known to the Plaintiff on 24th July 2018 itself, the Appellant has filed the Suit on 23rd April 2019, i.e. within three years from the date of the Sale Deed dated 24th July 2018. In these circumstances, in my view, the present Suit is not barred by the law of limitation.

22. Further, I am not inclined to accept the argument that the Appellant ought to have executed the Compromise Decree instead of filing the present Suit. By the Compromise Decree, it was agreed that the suit

property would be conveyed to the Appellant. Therefore, the Appellant had a right in law to get a conveyance of the suit property.

23. Section 31 of the Specific Relief Act, 1963 reads as under:

“31. When cancellation may be ordered. (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

24. Under the provisions of Section 31 of the Specific Relief Act, 1963, any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. Since the Appellant has a prior right in law to get a conveyance of the suit property, the said Sale Deed dated 24th July 2018 would be void or voidable against the Appellant, and if it is left outstanding, may cause serious injury to the Appellant. In these circumstances, the

Appellant has a right to file a Suit for cancellation of the said Sale Deed dated 24th July 2018 and does not necessarily have to execute the Compromise Decree.

25. As far as non-joinder of the parties is concerned, in the impugned Judgement, the Learned Judge has come to the conclusion that there was more than one Plaintiff in Special Civil Suit No.428 of 1987 but they were not made parties to the present Suit and, therefore, the present Suit is bad for non-joinder. I am afraid I am unable to accept this finding. Section 31 of the Specific Relief Act, 1963 entitles any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, to sue to have the instrument adjudged as void or voidable. In the light of the provisions of Section 31 of the Specific Relief Act, 1963, the Appellant alone is entitled to file the present Suit as the Sale Deed dated 24th July 2018 is void or voidable against him also and he has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury.

26. Further, as far as non-joinder of parties is concerned, the Learned Judge has also held that the owner of the suit property was not made a party to the Suit, and therefore, the Suit is bad for non-joinder.

27. I am unable to accept this finding. The Power of Attorney holder who signed the Sale Deed dated 24th July 2018 and the purchasers therein have been made parties to the present Suit. In these circumstances, it is not required that the owner should also be made a party to the present Suit. The allegation of the Appellant is against the power of attorney holder and the Appellant has no allegation or grievance against the owner.

28. In the light of the aforesaid, I will now have to consider as to whether the Appellant is entitled to an injunction as sought by him. In this regard, it is important to note that by an Agreement for Sale dated 10th April 1986 executed by the original owners in favour of the Appellant, the original owners agreed to sell to the Appellant Survey No.32 at Nashik, admeasuirng 11 acres, on the south side of the canal. Further, on 10th April 1986, a Power of Attorney was executed by the owners in favour of the Appellant and others authorizing the Appellant to act on behalf of the owners for developing the entire property of 11 acres on the south side of the canal. Since certain disputes arose between the Appellant and the original owners, Special Civil Suit No.428 of 1987 was was filed by the Appellant and others against the original owners for specific performance of the Agreement for Sale dated 10th April 1986. On 14th January 1991, Special Civil Suit No.428 of 1987 was compromised between the parties and the owners agreed to convey the entire property admeasuring 11 acres, which included the suit property, to the

Appellant and Others. The Court passed the Decree accordingly. Further, on 13th May 1991, the original owners executed an additional irrevocable Power of Attorney in respect of the entire property of 11 acres on the south side of the canal, which included the suit property, in favour of the Appellant and others, to do all such acts for developing the said property which was agreed to be conveyed to the Appellant by the owners. Further, on 13th May 1991, two registered Sale Deeds were executed by the original owners in favour of the Appellant and others. Under the said Sale Deeds, the entire consideration in respect of the suit property was paid by the Appellant to the original owners. The suit property was excluded from the said Sale Deeds as another Suit in respect thereof was pending. On 27th December 1991, NA Order was issued by the Collector Nashik. The Nazrana amount was paid by the Appellant and others for the entire land including the suit property. On 1st December 1992, another Order was passed under Section 8(4) of the Urban Land Ceiling Act, 1976 by the Competent Authority, Urban Land Ceiling, Nashik in respect of the holding of the original owners, which included the suit property. On 14th June 1993, the tentative layout was submitted by the Appellant and others to the Nashik Municipal Corporation in respect of the suit property, which had been earlier kept pending as orders were passed in the other Suit filed in respect thereof.

29. Despite the aforesaid, Respondent No.3, by misusing the power of attorney in his favour in respect of totally separate land admeasuring 8055 sq.mtrs., which is on the north side of the canal, executed the said Sale Deed dated 24th July 2018 in respect of the suit property.

30. Under the Compromise Decree dated 14th January 1991, the Appellant has a right to obtain a conveyance in respect of the suit property. The Appellant has paid the entire consideration for the suit property. The Appellant has obtained NA orders and also submitted and got sanctioned lay out plans from the Nashik Municipal Corporation in respect of the suit property and has paid all the necessary charges and premium for the same. The original owner has not disputed the Appellant's right to get a conveyance in respect of the suit property.

31. For all the aforesaid reasons, in my view, the Appellant has made out a prima facie case for granting reliefs in the Exhibit 5 Application filed by him.

32. In light of the aforesaid, and especially since the Appellant has a right to get a conveyance of the suit property and has incurred expenditure in respect of the suit property, whilst the Respondents have executed the Sale Deed dated 24th July 2018 on the basis of the Power of Attorney given to

Respondent No.3 in respect of the land on the northern side of the canal, in my view, the balance of convenience is in favour of the Appellant and against the Respondent. Further, if the interim relief sought by the Appellant is not granted, then irreparable prejudice, harm and injury will be caused to the Appellant as the Respondents would alienate or develop the suit property.

33. For all these reasons, the Appellant is entitled to an injunction as sought for.

34. As far as the judgment cited by Mr.Thorat in the case of **Anathula Sudhakar (Supra)** is concerned, the same is irrelevant for the purpose of the present case.

ORDER

35. In the light of the aforesaid discussions, and for the aforesaid reasons, the following Orders are passed:

- a. Appeal is allowed.

b. The impugned Order dated 8th September 2022 passed by the Court of Extra Joint Civil Judge (Senior Division), Nashik, is set aside.

c. Pending the final hearing and disposal of Suit No.182 of 2019, the Respondents, their officers, servants and agents are restrained from, in any manner acting on the Sale Deed dated 24th July 2018 and/or creating any third party rights and/or developing the suit property viz.(Survey No.32/2) CTS No 1120 admeasuring about 3890 Sq.mts. situated at Anandvali, Nashik.

d. In the facts and circumstances of the case, there will be no order as to costs.

e. In the light of the disposal of this AO, all Interim Applications are also rendered infructuous and are disposed of as such.

[FIRDOSH P. POONIWALLA, J.]