

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 711 OF 2026
WITH
INTERIM APPLICATION NO. 6757 OF 2026

Kumar Parisar Co-
Op.Ho.Soc.Ltd. Thr. Urmila
S.Kulkarni and Prashant K.Bankar

Appellant

versus

Gokhale Milestone Llp Thr Its
Partner Mr Vishal Vasant Gokhale

Respondent

Mr. Pradeep Thorat a/w Mr. Harshad Sathe a/w Mr. Siddhesh Bane a/w Ms. Sanskruti Otari a/w Mr. Darshan Gaikwad a/w Ms. Harshada Shrikhande, Advocates, for the Appellant.

Mr. Nischal S. Anand, Advocate for Respondent No. 1.

Mr. Vishal Kanade a/w Ms. Janhavi Joshi i/b J. M. Joshi, Advocates for Respondent No. 2.

Mr. Abhinav Chandrachud a/w Ms. Himani Narula a/w Ms. Riya Patil, Advocates i/by Pariman Law Associates for Respondent No. 3.

Mr. Nitin P. Deshpande a/w Ms. Rachana Harpale, Advocates, for Respondent No. 4.

CORAM: AARTI SATHE, J.

DATE: 24th SEPTEMBER 2026

P.C.

1. This Appeal from Order has been filed under the Order XLIII Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 (CPC) taking exception to the order dated 30th May 2026 (hereinafter referred to as the “impugned order”),

passed below Exhibit-5 by the learned 3rd Joint Civil Judge, Senior Division, Pune (hereinafter referred to as the “Trial Court”) in Special Civil Suit No. 487 of 2024 *inter alia* rejecting the relief of the temporary injunction under Order XXXIX, Rules 1 and 2 sought by the Appellant. By way of the aforesaid impugned order, the Trial Court has held that the Appellant had *prima facie* failed to prove their right and title beyond the side margins of the area conveyed to them being the portion admeasuring 6511.23 sq. meters lying on the south-west together with 3 Residential Building Nos. B1, B3, and C3 and 1 Commercial Building No. E1 together with Floor Space Index (FSI) to the extent of 11057.96 sq. meters, out of the larger amalgamated pieces of land bearing Survey Nos. 59/2/1, 59/2/3/4/5/6 (old 59/2/2 to 6), 60/2/1, 60/2/2A/3/4/5/6 (old 60/2/2 to 6), 61/2A/3/4/5/6 (old 61/2A/2 to 6) and 61/3/2 to 6, corresponding to City Survey Nos. 1799, 1800, 1801 and 1802, situated at village Kothrud of City of Pune, Taluka Haveli, District Pune, together with proportionate undivided share in the open space of the sanctioned layout and common rights of ingress and egress to and from the internal roads including approach to the club house (hereinafter referred to as the “suit property”), and considering the aforesaid, if the injunction was granted to the Appellant, the Respondents would suffer irreparable loss which could not be measured in terms of money.

2. Briefly, the facts are as follows:-

i. The original landlords, i.e., the Mutha and Korde families, executed a registered Development Agreement and power of attorney in respect of the land

admeasuring 6 Hectares and 7 Ares, of which 32,318 sq. meters. is covered by a common layout. The suit property is a part of the said undivided layout.

ii. On 26th November 1997, Respondent No. 2 executed 5 separate Memorandums of Understanding (MOUs) with Respondent No. 4 for sale of FSI in respect of the land admeasuring 4,085 sq. meters comprising plots for Buildings I and J, as per the layout prepared by the Respondent No. 2 in the year 1998. Respondent No. 2 conveyed the said land and FSI admeasuring 4,085 sq. meters with all rights, privileges, easements, hereditaments, liberties and appurtenances thereto along with the proportionate rights, title and interests in the roads and open spaces in the said layout. The said MOUs refer to the land admeasuring 4085 sq. meters together with the FSI.

iii. On 4th March 1998, the Pune Municipal Corporation sanctioned the first layout of undivided land admeasuring 32,318 sq. meters, wherein the layout indicated 30-meter-wide D.P. road, open space and 12 plinths. These 12 plinths were included in the plan and plots for Buildings I and J were also shown in the said layout. In the year 1999, Respondent No. 2 handed over the possession of the land admeasuring 4,085 sq. meters after the 30-meter-wide D.P. road was demarcated on the site by the Pune Municipal Corporation.

iv. Thereafter, Respondent No. 4 filed Special Civil Suit No. 1145 of 2000 before the Civil Judge, Senior Division, Pune against Respondent No. 2 and 33 other Defendants for specific performance of MOUs dated 26th November 1997 on account of disputes arising between Respondent No. 2 and Respondent No. 4. Respondent No. 3 in the present proceedings, was also party in the said suit. On

12th January 2001, Respondent No. 4 registered *lis pendens* with regard to the above suit. It is Respondent No. 4's contention that the Appellant's predecessor was also party to the said suit.

v. On 5th October 2001, the Civil Judge, Senior Division, Pune dismissed the application filed by Respondent No. 4 below Exhibit-5 in Special Civil Suit No. 1145 of 2000, pursuant to which, Respondent No. 4 preferred Appeal from Order No. 837 of 2001, challenging the order dated 5th October 2001.

vi. On 30th October 2001, the Respondent No. 3 filed an undertaking in Appeal from Order No. 837 of 2001, submitting that pursuant to the MOU dated 2nd July 2001 with Respondent No. 2 for assignment of 32,318 sq. meters of land, they would not alter the location of Buildings I and J and would keep vacant land admeasuring 907.80 sq. meters where the aforesaid building would be after construction and, and that Respondent No. 3 would leave FSI of 4085 sq. meters unutilized.

vii. On 28th November 2001, the application of Respondent No. 4 for temporary injunction was rejected in Appeal from Order No. 837 of 2001 by this Court, and a statement was recorded in the said order to the effect that the FSI of 4085 sq. meters and the location of the land corresponding to Buildings I and J having ground coverage to 907.80 sq. meters would be reserved, and it was clarified that the said area was plinth area. This Court therefore restrained the Respondents from dealing with, disposing of, encumbering, or creating any third-party rights, title and/or interest in, to, and upon the said two plots and the FSI of 4085 sq. meters.

viii. On 3rd June 2002, Respondent No. 2 executed a Deed of Assignment in favor of Respondent No. 3 with respect to the area admeasuring 32,318 sq. meters, as described in Schedule-B of the said Deed of Assignment. The Assignment was primarily in respect of the development rights with respect to 15,000 sq. meters of land in favor of Respondent No. 3. In the said Deed of Assignment, there was a specific reference to the order dated 28th November 2001 passed in Appeal from Order No. 837 of 2001, wherein it was clear that what was conveyed to Respondent No. 3 was physical area of land approximately 15000 sq. meters from Schedule-B, and also that the FSI of 4085 sq. meters reserved was to remain unutilized. This Deed of Assignment also specifically kept portions of Buildings I and J intact, and further indicated that in case the said location of Buildings I and J was changed by this Court, then to that extent there would be variation in Schedule-B of the Deed of Assignment.

ix. In the year 2002, Respondent Nos. 2 and 3 measured the land and put a wire meshed steel angle compound in such a manner so as to specify the property marked "I" belonging to Respondent No. 4, as well as the property allotted to Respondent No. 3 at the site. It is Respondent No. 4's contention that therefore the possession of Respondent No. 4 on the plots of Buildings I and J was reconfirmed.

x. In November 2003, Respondent No. 3 got the sanctioned revised layout plans from the Pune Municipal Corporation, which also earmarked the plot of area of the plots of Buildings I and J in the area table. In the said layout, the land which

was earmarked for the FSI of 4085 sq. meters was of the same amount, i.e., 4085 sq. meters, because the prevailing FSI at that time was 1:1.

xi. In the year 2003, Respondent No. 3 constructed four buildings on the assigned property as per the sanctioned plan VDCC No. 1052/2003 dated 19th December 2003 and Occupancy Certificate dated 19th May 2005. On 18th October 2004, the MOUs executed by Respondent No. 2 in favor of Respondent No. 4, which were the subject matter of Civil Suit No. 1145 of 2000 were registered. Thereafter, on 28th March 2005, Special Civil Suit No. 1145 of 2000 was decreed, and in the said judgment and decree it was directed that Defendant Nos. 1 and 2 therein (Respondent No. 2 and their Director in the present Appeal from Order) would execute conveyance of the FSI of 4085 sq. meters in respect of plots for Buildings I and J as per sanctioned plan dated 4th March 1998 in favor of Respondent No.4.

xii. On 19th September 2005, in Civil Application No. 2326 of 2005 in First Appeal No. 1074 of 2005, wherein Respondent No. 2 had challenged the judgment and decree dated 28th March 2005, this Court continued the arrangements dated 28th November 2001, recording the statement that Respondent No. 4 would not execute the decree on the condition that the order dated 28th November 2001 passed in Appeal from Order No. 837 of 2001 would operate as an interim arrangement.

xiii. On 7th June 2010, Respondent No. 3 got the earlier revised layout of 2007 revised once again. This was done as Pune Municipal Corporation could increase the permissible ground coverage for buildings as per the then prevailing

DC rules. Respondent No. 3 paid the required premium and got a 50% increase in the permissible ground coverage with respect to 15353.20 sq. metres.

xiv. On 2nd December 2013, Respondent No. 3 executed a Conveyance Deed in favour of the Appellant for the suit property. The said Conveyance Deed recorded that the revised sanctioned layout of 2003 was part of the said deed. In the said Conveyance Deed also, the land admeasuring 4085 sq. metres along with FSI of 4085 sq. metres was kept reserved for Respondent No. 4.

xv. Thereafter, Respondent No. 4 filed Civil Application No. 1653 of 2012 in F.A. 1074 of 2005 seeking leave to fence the property described in the Schedule of the Civil Application, and consent for the same was given by Respondent No. 2, and hence this Court by order dated 10th February 2023 permitted Respondent No. 4 to fence the portion admeasuring 4085 sq. metres. by corrugated steel sheets.

xvi. Thereafter, on 10th September 2023, the Appellant sent notice to Respondent No. 4 raising objection with regard to erection of the tin sheets and various other issues. On 20th March 2023, Pune Municipal Corporation objected to the Appellant's tin sheets placed on Property "I" and issued notices for removal/demolition of the same.

xvii. On 31st October 2023, Respondent No. 2 applied for revision of layout which was sanctioned by the Pune Municipal Corporation. The aforesaid revision became necessary in view of the Unified Development Control and Promotion Regulations (UDCPR), 2020 and the ground coverage restrictions were removed and the developer was bound to keep side margins proportionate to the

height of the building. Accordingly, instead of 7 ½ meters, a side margin of 12 meters was left.

xviii. On 12th January 2024, Respondent Nos. 2 and 4 conveyed plots for Buildings I and J together with all rights in favor of Respondent No. 1 in respect of 4085 sq. meters undivided land along with the equivalent FSI. Thereafter, on 27th February 2024, Interim Application No. 191 of 2024 in First Appeal No. 1074 of 2005 was allowed, and Respondent No. 4 was permitted to erect fencing on plots for Buildings I and J as per the sanctioned layout to the extent of a height of 25 feet.

xix. Thereafter, on 1st March 2024, Appellant filed Special Civil Suit No. 487 of 2024 for declaration of their title and a permanent injunction restraining the Respondents from disturbing possession of the Appellant over the suit property. The Appellant sought declaration of ownership of area admeasuring 6511.23 sq. meters and the claims, right and portion of the suit property on the basis of Conveyance Deed dated 2nd December 2013 executed in its favor by Respondent No. 3. It is the Appellant's contention that Respondent No. 1 forcibly removed the tin sheet erected around the suit property. Respondent Nos. 1 to 4 filed their Written Statements in Special Civil Suit No. 487 of 2024, and the Appellant filed an application below Exhibit-5 seeking temporary injunction.

xx. On 19th July 2025, a Division Bench of this Court in Interim Application (Stamp) No. 12257 of 2024 in First Appeal No. 1074 of 2005 filed by Respondent No. 2 permitted Respondent No. 4 to erect tin sheets as per the revised sanctioned layout of 2023 and the order dated 28th November 2001 in

Appeal From Order No. 837 of 2001 (and continued through the order dated 19th September 2005) was modified to that extent.

xxi. Various pleadings were filed by the Respondents in the application below Exhibit-5 in Special Civil Suit No. 487 of 2024, and by the impugned order dated 30th May 2026, the Trial Court rejected the aforesaid application. It is against this order that the present Appeal from Order arises.

3. Learned counsel Mr. Pradeep Thorat, along with Mr. Harshad Sathe, Mr. Siddhesh Bane, Ms. Sanskruti Otari, Mr. Darshan Gaikwad, and Ms. Harshada Shrikhande, appeared on behalf of the Appellant. Learned counsel Mr. Nischal S. Anand, appeared on behalf of Respondent No. 1, Mr. Vishal Kanade, along with Ms. Janhavi Joshi, instructed by J. M. Joshi, appeared on behalf of Respondent No. 2, Dr. Abhinav Chandrachud, along with Ms. Himani Narula, Ms. Riya Patil, instructed by Parinam Law Associates appeared on behalf of Respondent No. 3, and Mr. Nitin P. Deshpande, along with Ms. Rachana Harpale appeared on behalf of Respondent No. 4.

4. Learned counsel Mr. Thorat, on behalf of Appellant submitted that the impugned order suffers from non-consideration of relevant facts and further does not take into consideration the registered Conveyance Deed dated 2nd December 2013, whereby the property admeasuring 6511.23 sq. meters with constructed buildings B1, B2, C3, and E1 and appurtenant rights were conveyed to the Appellant. He further submitted that considering the chequered history of this present litigation initiated by Respondent No. 4 in respect of the MOUs dated 26th November 1997 entered into between Respondent No. 2 and Respondent No. 4,

this Court by an order dated 28th November 2001 had categorically recorded a statement that plinth area admeasuring 970.80 sq. meters and FSI of 4085 sq. meters for the plot for Buildings I and J would be kept unused.

5. He further submitted that in respect of the MOU dated 2nd July 2001, which was entered into between Respondent Nos. 2 and 3 agreeing to assign the property admeasuring 32318 sq. meters in favor of Respondent No. 3, in Appeal from Order No. 837 of 2001 filed by Respondent No. 4, Respondent No. 3 had filed an undertaking submitting that they would not make any change in the location of the plots for Buildings I and J, and that Respondent No. 3 would keep vacant land admeasuring 907.80 sq. meters. where the aforesaid buildings were to be constructed and also keep FSI of 4085 sq. meters unused. He submitted that even in the subsequent Deed of Assignment dated 3rd June 2002, entered into between Respondent Nos. 2 and 3, FSI of 4085 sq. meters was kept unutilized, and the said position was continued by the judgment and decree dated 28th March 2005 passed in Special Civil Suit No. 1145 of 2000, wherein Respondent No. 2 and their director were directed to execute conveyance of FSI of 4085 sq. meters of the plots for Buildings I and J to Respondent No. 4 as per the sanctioned plan dated 4th March 1998. In that order too, the plinth area of the plot for Buildings I and J was 970.80 sq. meters. and FSI of 4085 sq. meters was to be utilized in such plinth area. Even in the subsequent litigation, this plinth area and FSI remained undisturbed.

6. He further submitted that Respondent Nos. 2 and 3 had executed the Conveyance Deed in favor of the Appellant on 2nd December 2013, conveying the

suit property to the Appellant. According to learned counsel on behalf of the Appellant, by virtue of the aforesaid Conveyance Deed, the Appellant was put in possession of the suit property, and the learned Trial Court has not taken into consideration that the Appellant had a registered Conveyance Deed in its favour. Learned counsel on behalf of the Appellant also submitted that none of the Respondents have challenged the Conveyance Deed dated 2nd December 2013 executed in favor of the Appellant by Respondent No. 3 till date. In the absence of any challenge to the title of the Appellant in the suit property, it was submitted that the Respondents would not be permitted to contend that the Appellant had no right in respect of the same.

7. Further, learned counsel on behalf of the Appellant submitted that in the layout plans which were available in the years 2001, 2003 and 2010, the plinth area of the buildings was about 453.90 sq. meters. However, in the 2023 layout plan, the said plinth area had increased to 863.76 sq. meters, and the said change in the plinth area happened without consent of the Appellant, with the intention of encroaching on the suit property which was sold to the Appellant society. He further submitted that the learned Trial Court by dismissing the application for temporary injunction had erroneously held that the FSI is not a separate corporeal property detached from land, and has further erred in holding that the arrangement to keep the FSI of 4085 sq. meters by the order dated 28th November 2001 was modified by the order dated 19th July 2024, without appreciating that the arrangements arrived at between Respondent Nos. 2 and 4 were not *inter se* binding upon the Appellant, more so when Respondent Nos. 2 and 4 had already

transferred their right, title and interest in favor of Respondent No. 1 on 12th January 2024, which was before the order dated 19th July 2024.

8. He further submitted that the Trial Court had erred in holding that the suit property is an undivided portion of amalgamated land, and that no one can claim exclusive right over the said undivided land. He submitted that the learned Trial Court had failed to appreciate that the Appellant was claiming the rights on the suit property on the basis of a registered Conveyance Deed dated 2nd December 2013, which remains unchallenged. He further submitted that the learned Trial Court had failed to consider that this Court had never approved the layout of 2023, and that the order dated 19th July 2024 is an order passed in view of the consent between the parties and was therefore not an adjudication on merits.

9. He therefore submitted that considering that Respondent Nos. 2 and 3 are promoters with regard to the Appellant, they are bound to convey the title of suit property in favor of the Appellant, and any encroachment on the suit property by Respondent No. 1 ought to be protected, and hence, the learned Trial Court has failed to exercise its powers under Order XXXIX Rules 1 and 2 of CPC while denying the injunction to the Appellant. It was submitted by learned counsel on behalf of the Appellant that once the Appellant's title to the suit property has been established and remained uncontroverted, the Respondents could not be permitted to disturb the possession of the Appellant, and in view thereof, the impugned order ought to be set aside.

10. *Per contra*, learned counsel on behalf of Respondent Nos. 1, 2 and 4 submitted that the impugned order has been rightly passed by the learned Trial

Court and requires no interference. Learned counsel on behalf of Respondent No. 1 has submitted that Respondent No. 3 acquired the property admeasuring approximately 15000 sq. meters subject to the undertaking given by Respondent No. 3 of preservation of the location for Buildings I and J, and the non-utilization of FSI of 4085 sq. meters. The order dated 28th November 2001 of this Court whereby the FSI of 4085 sq. meters, and corresponding locations of buildings I and J were reserved also finds mention in the Deed of Assignment which was executed in favor of Respondent No. 3, and in fact, in the revised sanctioned layout of 19th December 2003, an area of 4085 sq. meters was deducted from 19438.20 sq. meters, leaving 15353.20 sq. meters for the balance layout. It was submitted that this layout plan was in consonance with this Court's order, wherein the 4085 sq. meters of FSI and the stated ground coverage for buildings I and J were to be kept unused. He submitted that considering that the FSI was at 1:1 ratio, and the land coverage was of 4085 sq. meters, it would be equivalent to FSI of 4085 sq. meters to be unused. He further submitted that the revised sanctioned layout also continued to show the reservations for the plot for Buildings I and J separately from the development undertaken by Respondent No. 3. He therefore submitted that even in respect of the Conveyance Deed dated 2nd December 2013 which was executed between Respondent No. 3 and the Appellant, the same expressly referred to this Court's proceedings and the exclusion of the reserved 4085 sq. meters FSI. He further submitted that considering that at all times the portion admeasuring 4085 sq. meters was kept out of the assignment of the property to Respondent No. 3, only the remaining portion was assigned to Respondent No. 3.

He therefore submitted that Respondent No. 3 had completed the development by constructing ten buildings and forming five societies, of which the Appellant was a part. He submitted that the entitlement of the five societies to the land could not exceed 15000 sq. meters assigned to Respondent No. 3. He submitted that the Appellant's portion admeasuring 6511.23 sq. meters forms part of this 15000 sq. meters portion, and that at all times 4085 sq. meters was kept reserved pursuant to the order of this Court.

11. He further submitted that the FSI of 4085 sq. meters was kept untouched, and the architect certificate dated 31st July 2004 also specifically stated that FSI of 4085 sq. meters was kept unused out of the total permissible FSI of the suit property, pursuant to the order dated 28th November 2001. He further submitted that considering that the Appellant's entitlement was part of an undivided amalgamated land, the Appellant could not seek the declaration of ownership and possession over a separately marked portion and seek an injunction preventing the Respondents from using that portion even as a marginal open space for Building I. He also submitted that this Court in its order dated 28th November 2001 had specifically recorded that the area of 970.80 sq. meters referred to the plinth area of the proposed buildings and did not represent the entire land entitlement supporting those buildings. He submitted that the portion of 4085 sq. meters had all times been kept out of the larger land and the said has been proved in the layout plans. He submitted that the Appellant's own Conveyance Deed dated 2nd December 2013 also records the fact that the portion of 4085 sq. meters of land has been kept untouched. He submitted that at the time of entering the

aforesaid Conveyance Deed, the Appellant was aware of this exclusion of 4085 sq. meters and therefore, all these events which had happened prior to the execution of the conveyance could not be used by the Appellant to restrain any of the Respondents from exercising their lawful rights on the suit property. He submitted that the Trial Court had specifically considered Schedule-C in the Deed of Assignment in favor of Respondent No. 3, the exclusions in the Appellant's own Conveyance Deed dated 2nd December 2013, the sanctioned area statements and orders of this Court to refuse the grant of protective injunction to the Appellant. He submitted that the portion of 6511.23 sq. meters of the Appellant has remained protected, and the Appellant now cannot claim rights over the disputed portion at Building I or in respect of 4085 sq. meters which have been categorically excluded and remained untouched on account of various orders of this Court. He therefore submitted that the present Appeal from Order deserved to be dismissed.

12. Learned counsel on behalf of Respondent No. 2 has submitted that the Appellant themselves in the plaint filed before the Trial Court have submitted that the suit property forms part of an undivided and amalgamated land, and hence, it in no way indicates the exact area which has been encroached by any of the Respondents, and further does not even make out a case of any encroachment. He further submitted that the Appellant has been unable to *prima facie* demonstrate that in an amalgamated layout, how the Appellant can claim his entitlement. He submitted that from a reading of the plaint itself it can be seen that the Appellant has been unable to make out a case of encroachment or ascertainment of exact location and area of the entitlement of the Appellant. He also submitted that on a

reading of the plaint it was clear that there was existence of tin sheet fencing from the commencement of construction of the building which indicated that even before the Appellant could be forced, a tin sheet existed fencing on the northern side of the Property between the said property and proposed Building I.

13. He further submitted that the Conveyance Deed executed in favor of the Appellant itself specifically mentioned that the Appellant was conveyed land admeasuring 6511.23 sq. meters, and it clearly excluded portion admeasuring 4085 sq. meters, which made a mention in the judgment and decree passed in Special Civil Suit No. 1145 of 2000, the order in First Appeal No. 1074 of 2005, and also the order in Appeal from Order No. 837 of 2001. He further submitted that the contention of the Appellant that only a plot area of 970.80 sq. meters was reserved, and not 4085 sq. meters is a fallacious contention, in as much as in the Conveyance Deed dated 2nd December 2013 itself, the approved plan has been annexed, which itself shows that the land admeasuring 4085 sq. meters was reduced from the total area of 19438 sq. meters, and the so called 970.80 sq. meters was only the plinth area of the building and not the measurement of the land parcel. He therefore submitted that the learned Trial Court had rightly come to the conclusion that the FSI is not the separate corporeal property detached from the land, and that it is the benefit arising out the land. He further submitted that the contention if accepted, would be contrary to the order passed by this Court dated 19th July 2024, wherein it has been expressly recorded that the land admeasuring 4085 sq. meters is to be kept reserved/unused. The said order has not been challenged, and neither has the layout of 2023 been challenged, wherein the area of Building 'T' plinth and the FSI

is demarcated in the sanctioned plan, and which is at 12 meters side margin distance from the building 'B1' of the Appellant. He therefore submitted that in view of the order dated 19th July 2024, the area of plot for Building 'T' for the purpose of FSI under the layout of 2023 stands confirmed. He therefore submitted that the aforesaid Appeal from Order requires to be dismissed.

14. Learned counsel on behalf of Respondent No. 3 has submitted that the crux of the present dispute, lies precisely in Respondent Nos. 1, 2, and 4 now attempting to construe the said FSI of 4085 sq. meters as area of land instead of 4085 sq. meters' which is actually FSI and not physical area of land. He submitted that such attempt on the part of Respondent Nos. 1, 2, and 4 is contrary to the order dated 28th November 2001 in Appeal from Order No. 837 of 2001 and the judgment and decree dated 28th March 2005 in Special Civil Suit No. 1145 of 2000, as if it were 4085 sq. meters of vacant, subdivided land, so as to wrongfully claim and obtain the increase in the plinth area of Buildings I and J, which is more than the reserved plinth area of 970.80 sq. meters as mentioned in the order dated 28th November 2001 in an illegal attempt to avail of the consumption of the additional construction which has now become permissible under the UDCPR, 2023, which permits additional FSI that was not available under the earlier DC Rules as applicable in the year 2001. He submitted that this clearly demonstrates collusion between the Appellant and Respondent No. 2, who are now erroneously interpreting the 4085 sq. meters of FSI as being the land parcel of land.

15. He further submitted that it is an agreed position that 4085 sq. meters is the FSI that is applicable on 970.80 sq. meters of plinth area, and that this has

been constantly reiterated time and again in agreements entered into and executed between the parties. The same is evident from and elucidated by the Deed of Assignment dated 3rd June 2002 between Respondent No. 2 and Respondent No. 3 as well as the Conveyance Deed dated 2nd December 2013 between the Appellant and Respondent No. 3, which clearly state that 4085 sq. meters to be the FSI and not the parcel of land. He submitted that this position is further entailed in the order dated 28th November 2001, which confirms that what stood conveyed, and what remains unutilized to date, is the FSI of 4085 sq. meters relatable to Buildings I and J, having a total ground coverage of 907.80 sq. meters.

16. He further submitted that the layout plan sanctioned in the year 2003, being one that reflects a position that has been uniformly accepted and acted upon not merely by Respondent No. 3, but by the Appellant, Respondent No. 2, and, by their conduct and silence for over two decades, by Respondent No. 4 as well. The location of Buildings I and J, the plinth area of 970.80 sq. meters, and the FSI of 4085 sq. meters relatable thereto, as reflected in the 2003 layout plan, form the very basis of the registered Conveyance Deed dated 2nd December 2013 executed in favour of the Appellant, and were never questioned or sought to be disturbed by Respondent No. 4 or Mr. Vijay Dadhe at any time between 2001 and 2023. He contended that it is in these circumstances that the 2003 layout plan, being the position accepted by all the parties to the present proceedings, ought to be considered and relied upon by the Court as the correct and accepted position, in preference to the layout plan of 2023, which has been unilaterally invoked by Respondent Nos. 1, 2 and 4 for the first time only after the coming into force of

the UDCPR, 2023. He also submitted that in this regard, this Court was shown the location of Buildings I and J as depicted in the 2003 layout plan, in order to demonstrate that the Appellant itself accepts that the location of Buildings I and J remains the same as shown in the said plan.

17. He further submitted that the construction of Buildings I and J may be permitted to proceed strictly in accordance with, and confined to, the layout plan of 2003, being the position uniformly accepted by all the parties, including the Appellant, for over two decades, and that the proposed construction ought accordingly to be restricted to what is contemplated under the 2003 layout plan, without permitting any enlargement of, or deviation from that position on the strength of the layout plan of 2023, which represents a unilateral and belated departure from the position consistently accepted by all concerned.

18. Learned counsel on behalf of Respondent No. 4 has primarily adopted the contentions made by learned counsel on behalf of Respondent Nos. 1 and 2. He has further supplemented the contentions as taken by learned counsel on behalf of Respondent Nos. 1 and 2 to submit that at all times, the FSI of 4085 sq. meters along with the plot area of 4085 sq. meters was kept reserved and unused, and considering that the layout plan of 2023 and the order of this Court dated 19th July 2024 has not been challenged so far, the Appellant could now not contend that there was any threat of his premises being encroached. He further submitted that even in the Conveyance Deed which was executed between Appellant and Respondent No. 3, there was a specific exclusion of portion of 4085 sq. meters for Buildings I and J, and hence, considering that the Appellant stood on a larger

amalgamated land, there could not be any right which the Appellant had in the aforesaid property. He further submitted that the Appellant has undivided land rights of 6511.23 sq. meters out of the total 15000 sq. meters of land, however, the Appellant does not have any *locus standi* nor any say regarding planning and development of Buildings I and J of Respondent No. 4, for which the 4085 sq. meters of land had been kept untouched as per various orders passed by this Court. He further submitted that there is no apprehension or actual encroachment which the Appellant has been able to establish to seek the injunction as prayed for.

ANALYSIS AND FINDINGS

19. I have considered the rival submissions and perused the impugned order along with the relevant documents. At the very outset, the present dispute, which has a very chequered history, and has gone through several rounds of litigations, can be crystalized only in respect of the entitlement of the Appellant's protection vis-à-vis the suit property. It is an undisputed position by all the parties that the Appellant was entitled to the suit property. The description of the suit property has been specifically given by the Appellant in the plaint itself. It is therefore clear that the Appellant's property was always a part of an undivided continuous land. It is only when litigation arose between Respondent Nos. 2 and 4 that orders were passed to keep an area of 4085 sq. meters along with the equivalent FSI as untouched and reserved. The said portion has been kept reserved by orders passed in Special Civil Suit No. 1145 of 2000, First Appeal No. 1074 of 2005, and Appeal from Order No. 837 of 2001. This Court has also in order dated 19th July 2024 modified order dated 28th November 2001 and specifically recorded

that the obligation to keep plots for Buildings I and J reserved and unused be as per the latest sanctioned layout of 2023 and further land of 4085 sq. meters be kept unused.

20. I am therefore of the view that as rightly held by the learned Trial Court, as there is no challenge to the order dated 19th July 2024 passed by this Court, and also to the sanctioned layout of 2023, and considering that, the area of 4085 sq. meters along with equivalent FSI stands untouched, there is no case made out by the Appellant to seek injunction in the present case. Throughout the various proceedings which have culminated between the various Respondents and also the Conveyance Deed by which the Appellant got the suit property, the area reserved for plot for Buildings I and J and the area of 4085 sq. meters has been kept reserved/untouched, and hence there is no case made out by the Appellant to seek injunction in the present case. As rightly held by the learned Trial Court, it is not the case of the Appellant that they were not aware that the aforesaid 4085 sq. meters was reserved, and the said has been recorded in the Conveyance Deed dated 2nd December 2013 conveying the suit property to the Appellant.

21. I am further of the view that even in the order of this Court dated 28th November 2001, which stood modified later, it has been held that the FSI of 4085 sq. meters and the location of the land corresponding to Buildings I and J, which have ground coverage of 907.80 sq. meters, was kept reserved. It was in fact clarified that the portion of 907.80 sq. meters was only plinth area and not land coverage, and hence, at all times, the FSI of 4085 sq. meters remained protected. An undertaking by Respondent No. 3 was given only in respect of the portion of

land of 907.80 sq. meters and not land of 4085 sq. meters. Hence the reliance by learned counsel on behalf of the Appellant on the aforesaid undertaking would not help the Appellant to advance its case further. Further, even in the Deed of Assignment dated 3rd June 2002, which was entered between Respondent Nos. 2 and 3 for an area of 15000 sq. meters, the portion of 4085 sq. meters was kept reserved and never formed part of the aforesaid assignment.

22. In my view, once an area is demarcated and the same is also reflected in the Conveyance Deed dated 2nd December 2013 which has been entered by Respondent No.3 with the Appellant, then to seek injunction in respect of that portion of land which was always protected, I am of the view that the Trial Court has rightly refused the injunction. I am further of the view that contentions which have been raised by the Appellant are issues which are to be tried at the trial and the same would require determination after leading evidence, and particularly the issue whether only 970 sq. meters land was available for an FSI 4,085 sq. meters., or whether 4,085 sq. meters, area of land was required for an FSI of 4,085 sq. meters itself. These are issues which can be tried at the trial and do not require any interference at the interlocutory stage as rightly held by the Trial Court. In fact, as rightly pointed out by learned counsel on behalf of Respondent No. 2, it is clear that the Conveyance Deed dated 2nd December 2013 also clearly shows that the land admeasuring 4085 sq. meters reserved for buildings I and J was deducted from the net plot area admeasuring 19438.20 sq. meters. The balance amount of 15000 sq. meters was therefore available to Respondent No. 3, which included the area of 6511.23 sq. meters which belongs to the Appellant. There is, therefore, no

doubt in my mind that the learned Trial Court has rightly come to the conclusion that considering that in all the documents evidencing assignment/sale of the suit property, the land admeasuring 4085 sq. meters and the equivalent FSI has been kept untouched and reserved.

23. I am also of the view that the learned Trial Court has also considered that the Sale Deed dated 12th January 2024 conveyed by Respondent Nos. 2 and 4 in respect of plot for Buildings I and J in favor of Respondent No. 1 was a sale of an undivided FSI on the land as per the sanctioned approved plan of 2003 and 2023, which is accepted by this Court. Therefore, the learned Trial Court had rightly come to the conclusion that the Appellant had not been able to establish any right, title, and interest in the suit property beyond the side margins of the land. and the same could not even be *prima facie* proved from the pleadings and documents.

24. I am also of the view that in the present case, the Appellant has not been able to establish either before the learned Trial Court or even before this Court as to what encroachments haven taken place, or are apprehended by the Appellant, considering that the Appellant's rights were only in respect of the land and the FSI conveyed to them by the Conveyance Deed dated 2nd December 2013 executed in their favor. The Appellant has also not disputed that the suit property is a part and parcel of an amalgamated piece of land, and therefore, I am of the view that the learned Trial Court has rightly come to the conclusion that the Appellant had no *prima facie* case to prove any right, title and interest in respect of the suit property beyond the side margins of the area conveyed to them, and there was actually no tangible encroachment that has taken place.

25. I am of the view that on mere apprehension that encroachment would take place would not give the right to the Appellant to seek the injunction as sought for, and only on the basis of the layout plan of 2023, where the Appellant has pointed out that the total proposed area of Building I has increased to 863.76 sq. meters could not be a ground to apprehend that any encroachment would take place. In the earlier plans of 2001, 2003 and 2010, the net plot area remains 19436.20 sq. meters, wherein a provision was made for 4085 sq. meters, which was reserved for Buildings I and J as per this Court's order dated 28th November 2001, and the balance amount of the undivided land of 15000 sq. meters is where the development had taken place. Therefore, only on the basis of the 2023 layout plan, which the Appellant has chosen not to challenge, and which has also been accepted by this Court in its order dated 19th July 2024, I am of the view that the Appellant has failed to make out a *prima facie* case in its favor, and therefore, I am of the view that the order of the learned Trial Court does not warrant any interference. Further considering that the area of 4085 sq. meters, was always reserved, any development on the aforesaid property would not in anyway encroach upon the rights of the Appellant as the same was always out of the purview of the Appellant's rights. That once the sanctioned 2023 plan and the order of the High Court dated 19th July 2024 was not a subject matter of challenge by the Appellant, then to contend that there was a change in the 2023 plan in respect of the area demarcated for Buildings I and J would not be a ground available to the Appellant to seek injunction.

26. It is also my view that by order dated 27th February 2024, this Court had allowed Respondent no.4 to put up the fencing around the Buildings I and J

and only once that permission was granted, Respondent no.4 put the fencing around the Buildings I and J in accordance with the sanctioned layout of 2023. It is therefore an erroneous contention on the part of the Appellant that the Respondent no.1 is now seeking to encroach the area which is actually the area of the Appellant. Once the position not being disputed that the land admeasuring 6,511.23 sq. meters conveyed to the Appellant forms part of the remaining 15,000 sq. meters of land which was conveyed for the purposes of development and 4,085 sq. meters of land always being reserved and protected, then the plea of the Appellant that there is encroachment has been rightly rejected by the Trial Court. Hence, I am of the view that no interference is called for in the Trial Court's impugned order.

27. I am further of the view that applying the principles of Wander Ltd. v. Antox India (P) Ltd.¹, while considering an application under Order XXXIX Rules 1 and 2 of the CPC, the appellate court would not ordinarily interfere with the exercise of discretion by the court of first instance or substitute its own discretion, except where such discretion has been exercised or has been shown to have been exercised arbitrarily, or capriciously, or perversely, or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions, and the facts of the present case do not warrant any interference with the impugned order of the Trial Court, as the impugned order is a well-reasoned and well-considered order.

¹ (1990) Supp SCC 727

28. Considering the aforesaid facts and the settled position of law, I am of the view that the impugned order has been passed after duly appreciating the facts and the applicable law. The view taken by the learned Trial Court is a plausible view and does not warrant interference by this Court in its appellate jurisdiction.

29. In view thereof, the Appeal from Order fails and is accordingly dismissed. The Trial Court is directed to dispose of suit expeditiously. There shall be no order as to costs.

21. In view of the dismissal of the Appeal from Order, pending Interim Application(s), if any do not survive and are accordingly disposed of.

(AARTI SATHE, J.)