

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 957 OF 2023

Chandrakant Joshi & Ors. ... Appellants
V/s.

M/s. Shree Durga Vastu Makers Pvt. Ltd. & Ors. ... Respondents

WITH
INTERIM APPLICATION NO. 7119 OF 2024
WITH
INTERIM APPLICATION NO. 17483 OF 2023
IN
APPEAL FROM ORDER NO. 957 OF 2023
WITH
APPEAL FROM ORDER (ST) NO. 31717 OF 2023
WITH
INTERIM APPLICATION (ST) NO. 31719 OF 2023
IN
APPEAL FROM ORDER (ST) NO. 31717 OF 2023
WITH
APPEAL FROM ORDER NO. 995 OF 2023
WITH
INTERIM APPLICATION NO. 17821 OF 2023
IN
APPEAL FROM ORDER NO. 995 OF 2023

Ms. Prachi Tatake, for the Appellants/Org. Plaintiffs.

Mr. Pradeep Thorat, with Ms. Richa Singh, for Respondent No. 1/Org. Defendant No. 1.

Mr. G. C. Singh for Respondent No. 2/Org. Defendant No. 2.

Mr. Ashutosh Gavnekar, with Ms. Neeta Jadhav, i/b Ms. Komal Punjabi, for the Respondent No. 3/ Org. Defendant No. 3 - MCGM.

CORAM: FARHAN P. DUBASH, J.

RESERVED ON: 17th APRIL 2026
PRONOUNCED ON: 17th JULY 2026

ORDER:

1. The present Appeal is directed against the order passed by the Trial Court on the Notice of Motion taken out by the original Plaintiffs, who claim to be the owners of parcels of land bearing C.T.S. Nos. 220 and 227/1 situated at Borivali, Mumbai. By the order dated 9th October 2023 (hereinafter referred to as the ***“impugned order”***), the Trial Court, pending the hearing and final disposal of the suit, restrained original Defendant Nos. 1 and 2 from using the land bearing C.T.S. No. 220 (hereinafter referred to as the ***“disputed land of way”***) and the land bearing C.T.S. No. 227/1 (hereinafter referred to as the ***“suit land”***) as an access for ingress to and egress from Wings “D” and “E” of the Veerdhaval Building from Lokmanya Tilak Road. However, the Trial Court declined to grant the further relief sought by the original Plaintiffs of restraining original Defendant No. 1 Developer, from carrying out any further construction of Wings “D” and “E” of the Veerdhaval Building belonging to original Defendant No. 2 Society.
2. The impugned order has given rise to cross Appeals. The original Plaintiffs have preferred Appeal from Order No. 957 of 2023 challenging the refusal to restrain further construction, whereas, original Defendant No. 1 Developer has preferred Appeal from Order (St.) No. 31717 of 2023, and original Defendant No. 2 Society has preferred Appeal from Order No. 995 of 2023, challenging the injunction restraining the use of the suit land and the disputed land of way as access. For convenience, therefore, the parties

shall hereinafter be referred to in the same manner as they are described in the cause title of the suit. Original Defendant No. 3 is the Municipal Corporation of Greater Mumbai (**MCGM**), while original Defendant No. 4 is a proforma defendant against whom no substantive relief has been claimed.

BRIEF FACTS

3. The relevant facts giving rise to the present Appeals may be briefly stated as under:
- (i) One Govind Narayan Joshi, who died on 3rd May 1968, was the owner of lands bearing C.T.S. Nos. 227 and 227/1 to 227/3 admeasuring approximately 228.5 sq. metres, together with a bungalow known as “Govind Smruti” standing on C.T.S. Nos. 227/2 and 227/3. Upon his demise, he was survived by his three sons, namely, late Hareshwar Govind Joshi, late Madhukar Govind Joshi and late Ganpat Govind Joshi, who are stated to be the predecessors-in-title of the Plaintiffs.
 - (ii) Defendant No.2 Society is the owner of lands bearing C.T.S. Nos. 43, 222, 222/1 to 222/5, 225, 225/1 to 225/3 and 226. With a view to developing the said property, Defendant No. 2 entered into a Development Agreement dated 5th September 2013 with Defendant No.1 for construction of Wings “A”, “B” and “C” of the Veerdhaval Building.
 - (iii) On 8th July 2014, the MCGM issued the Intimation of Disapproval,

- thereafter granting amended approvals and extending commencement certificates from time to time.
- (iv) During 2014, for the purpose of facilitating construction of Wings “A”, “B” and “C”, Defendant No.1 approached the predecessors of the Plaintiffs seeking permission to utilize a portion of the disputed land of way, namely, C.T.S. No. 220, as an access from Lokmanya Tilak Road. Consequently, some of the predecessors of the Plaintiffs, who collectively held a 1/4th undivided share in the disputed land of way, executed an agreement dated 28th August 2014 (hereinafter referred to as the ***“said agreement”***), permitting Defendant No.1 to utilize the FSI/TDR relatable to their share in the disputed land of way and to use the said land as access for Wings “A”, “B” and “C”. The remaining co-owners are also stated to have subsequently executed agreements in favour of Defendant No. 1 in respect of the other/remaining share.
- (v) On 28th December 2018, a Part Occupancy Certificate was granted in respect of Wings “A”, “B” and “C”.
- (vi) Thereafter, in or about November 2021, Defendant No.1 proposed further development by amalgamating adjoining lands bearing C.T.S. Nos. 42, 44, 45 and 229 with the existing layout, with the object of constructing two additional buildings, namely Wings “D” and “E”.
- (vii) On 20th December 2021, the Municipal Commissioner approved the revised proposal, pursuant to which sanctioned plans dated 27th December 2021 came to be issued for Wings “D” and “E”.

- (viii) On 28th March 2022, Plaintiff No.1 lodged a complaint objecting to the proposed development in relation to the suit land and the disputed land of way.
- (ix) In July 2023, the Plaintiffs instituted the present suit seeking, *inter alia*, declarations that they are co-owners of C.T.S. No.227/1 admeasuring approximately 32 sq. metres, that they hold an undivided 1/3rd share in C.T.S. No.220 admeasuring 49.70 sq. metres, and that Defendant Nos.1 and 2 are not entitled to use either of the said properties as access from Lokmanya Tilak Road to Wings “D” and “E”.
- (x) The Plaintiffs further sought a declaration that the approvals granted for construction of Wings “D” and “E” had been procured on the basis of fabricated documents and in violation of the agreement executed in respect of the disputed land of way, and were therefore illegal and liable to be declared invalid.
- (xi) In August 2023, the Plaintiffs took out a Notice of Motion seeking interim reliefs, including an injunction restraining Defendant Nos.1 and 2 from carrying out further construction of Wings “D” and “E”, and restraining them from interfering with the Plaintiffs’ alleged possession of the suit land and the disputed land of way or from using the same as access to Wings “D” and “E”. The said Notice of Motion culminated in the impugned order dated 9th October 2023.
- (xii) During the pendency of the present Appeals, several developments have taken place. Various orders have been passed by this Court,

including orders directing a survey for identification of the suit land, seeking clarifications from MCGM regarding utilisation of FSI, directing inspections of the site, and calling for reports from the concerned authorities. However, and most importantly, it is stated that construction of Wings “D” and “E” now stands completed. However, Defendant No. 3 MCGM has withheld issuance of the Occupancy Certificate in respect thereof.

SUBMISSIONS OF THE PLAINTIFFS

4. Ms. Prachi Tatake, learned counsel appearing for the Plaintiffs, submits that the Trial Court committed a manifest error in refusing to grant prayer clause (a) of the Notice of Motion despite recording a prima facie finding in paragraph 19 of the impugned order that Defendant Nos. 1 and 2 were not entitled to use the suit land and the disputed land of way for construction of Wings “D” and “E”.
5. It is submitted that once the Trial Court concluded that Defendant Nos.1 and 2 had no entitlement to use the Plaintiffs’ lands, it necessarily ought to have restrained further construction of Wings “D” and “E”. According to Ms. Tatake, having accepted the existence of the suit land on the basis of the Sanad issued by the Revenue Authorities and the City Survey Plan, the Trial Court ought to have granted complete interim protection.
6. Ms. Tatake further submits that the Trial Court itself observed that the rival claims would require adjudication after a full-fledged trial and that the Plaintiffs could not be deprived of their asserted rights in the disputed land

of way without such adjudication. Having recorded these findings and found a prima facie case in favour of the Plaintiffs, she contends that the refusal to restrain further construction renders the interim protection illusory and defeats the very purpose of the Notice of Motion. Reliance is placed upon the decision of the Supreme Court in ***Gangubai Bablya Chaudhary v. Sitaram Bhalchandra Sukhtankar***¹.

7. She further submits that the Trial Court failed to correctly construe the agreement dated 28th August 2014. According to her, the agreement merely permitted utilisation of FSI/TDR in respect of the property specifically referred to therein and granted a limited right of access for Wings “A”, “B” and “C”. Particular reliance is placed upon clause 5, which expressly provides that the agreement is not a conveyance and does not create or transfer any estate or interest in the property. It is therefore submitted that Defendant Nos.1 and 2 acquired only a limited contractual right and no proprietary or heritable right in the Plaintiffs’ property.
8. It is further submitted that the sanctioned plans dated 27th December 2021 were obtained on the basis of fabricated and incorrect City Survey plans, which omitted the suit land. According to Ms. Tatake, Defendant Nos.1 and 2 amalgamated C.T.S. Nos.42, 44, 45 and 229 with the earlier layout and procured approvals by suppressing the existence of the suit land and without obtaining the Plaintiffs’ consent. It is contended that such conduct amounts to deliberate suppression of material facts and misrepresentation before the municipal authorities and the Court, thereby disentitling Defendant Nos.1 and 2 to any equitable relief. Reliance is placed upon

¹ (1983) 4 SCC 31

***Commissioner of Customs (Preventive) v. Aafloat Textiles (I) (P) Ltd.*²**

9. Ms. Tatake further points out that by a communication dated 12th January 2026, Defendant No.1 offered to pay a sum of Rs. 50,00,000/- towards settlement of the Plaintiffs' claims in respect of the suit land. According to her, the Plaintiffs declined the proposal since the dispute concerns alleged fraudulent conduct in procuring development permissions and cannot be resolved merely by payment of monetary compensation.
10. She submits that Defendant No.1 deliberately misrepresented the availability of access from Lokmanya Tilak Road by portraying the suit land and the disputed land of way as part of the access to Wings "D" and "E", despite having no lawful authority to do so. Such alleged acts of fabrication and suppression, it is urged by her, cannot subsequently be legitimized by an offer of settlement.
11. On the aforesaid grounds, it is submitted that the impugned order suffers from patent legal infirmity to the extent it declines to restrain further construction and therefore warrants interference in appellate jurisdiction.

SUBMISSIONS OF DEFENDANT NO. 1 DEVELOPER

12. *Per contra*, Mr. Pradeep Thorat, learned counsel appearing for Defendant No.1, submits that the Trial Court committed an error in granting prayer clause (b) after having declined prayer clause (a). According to him, once the Trial Court held that the Plaintiffs had failed to establish a prima facie case to restrain construction upon Defendant No.1's own lands, it could not

² (2009) 11 SCC 18

simultaneously restrain the use of the access.

13. He submits that Wings “D” and “E” have been constructed entirely upon C.T.S. Nos. 42, 44, 45 and 229, in which the Plaintiffs admittedly claim no ownership. He adds that the construction has been completed strictly in accordance with sanctioned plans. He further submits that Defendant No.1 has acquired a 3/4th undivided interest in the disputed land of way bearing C.T.S. No. 220 from the remaining co-owners, whereas the Plaintiffs hold only a 1/4th share. Under the agreement dated 28th August 2014, he points out, the Plaintiffs’ predecessors transferred the development potential relatable to their share for valuable consideration of Rs. 30,00,000/-, which has admittedly been accepted. He submits that the corresponding FSI has already been consumed for construction of Wings “A”, “B” and “C”. In these circumstances, he urges that Defendant No.1 cannot be restrained from using the disputed land of way for access to Wings “D” and “E”.

14. Insofar as the suit land is concerned, Mr. Thorat submits that the Plaintiffs are not in possession thereof. He submits that at the time of passing the impugned order, the Plaintiffs were not even in a position to identify its exact location. Therefore, he adds that in the plaint, the Plaintiffs have neither made any pleading of them being in exclusive possession thereof nor is there any document annexed therewith, from which they were able to corroborate this position. He further relies upon the survey conducted on 18th April 2024, which, according to him, indicates that the suit land falls within the compound of Defendant No.2 Society. He also points out that the Plaintiffs have not sought recovery of possession and that their conduct since 2014, when the “A”, “B” and “C” Wings were constructed with their

consent, belies any possessory claim.

15. Without prejudice to the rights and contentions of Defendant No.1 regarding the correctness of the City Survey Report, Mr. Thorat submits that Defendant No.1 is willing to deposit a sum of Rs. 50,00,000/- before the Trial Court to secure the Plaintiffs' alleged interest in the suit land. On these grounds, he submits that the impugned order, insofar as it restrains use of the access, deserves to be set aside.

SUBMISSIONS OF DEFENDANT NO. 2 SOCIETY

16. Defendant No. 2 Society did not advance any independent submissions in support of the Appeal preferred by it, but instead, adopted the submissions made by Defendant No. 1 Developer.

ANALYSIS, REASONS & FINDINGS

17. I have heard the parties at some length and have perused the material placed before this Court.
18. At the outset, it would be apposite to bear in mind the well-settled limits on the exercise of appellate jurisdiction while considering an appeal arising from an interlocutory order granting or refusing temporary injunction. An Appellate Court does not lightly substitute its own discretion for that exercised by the Court of first instance merely because another view is possible. Interference is justified only where the discretion has been exercised arbitrarily, capriciously, perversely or upon an erroneous

application of settled principles governing the grant of interim relief. The Appellate Court is therefore required to examine whether the Trial Court correctly applied the *trifecta* tests of prima facie case, balance of convenience and irreparable injury while passing the impugned order. Moreover, it is also well settled that generally, the Appellate Court is required to undertake such an exercise on the basis of the pleadings and documents that were placed before and considered by the Trial Court.

19. The Plaintiffs assert ownership of the suit land bearing C.T.S. No.227/1 and an undivided share in the disputed land of way bearing C.T.S. No. 220. Defendant No.1, on the other hand, disputes the extent of such rights and relies upon the agreements executed by the predecessors of the Plaintiffs and the other co-owners. It is, however, not in dispute that the Plaintiffs do not claim exclusive ownership over the disputed land of way. Their own case is that they possess only an undivided share therein. Equally, it is also not disputed that Defendant No.1 has obtained similar agreements from the remaining co-owners. Consequently, Defendant No.1 cannot be regarded as a complete stranger at least insofar as the disputed land of way is concerned. At the same time, Defendant No.1 cannot claim rights greater than those flowing from the agreements executed in its favour. The exact nature and extent of those rights necessarily require a detailed examination of the agreements and surrounding circumstances, which can only be undertaken upon the parties leading evidence at trial.
20. Much emphasis has been placed by the Plaintiffs upon the agreement dated 28th August 2014. According to them, the agreement merely permits utilisation of FSI/TDR relatable to their share in the disputed land of way

only for the purposes of Wings “A”, “B” and “C” and expressly records that it is not intended to operate as a conveyance of any estate or interest in the land. Defendant No.1, on the other hand, submits that the agreement also permits use of the disputed land of way as an access and that the parties have acted upon the same after receipt of consideration.

21. Having considered the rival submissions, it cannot be disputed that clause 5 of the agreement expressly provides that the instrument is not a conveyance and does not transfer any estate or proprietary interest in the Plaintiffs’ property. Prima facie, therefore, the agreement cannot be construed as conferring ownership rights upon Defendant No.1. However, the agreement also records that the disputed land of way was to be utilized as access in connection with the development undertaken by Defendant No.1. Whether such permission was confined only to Wings “A”, “B” and “C” or whether it extends to subsequent phases of development is a question which necessarily depends upon a complete construction of the agreement as a whole. Such an exercise would necessarily require evidence and cannot appropriately be undertaken while considering an interlocutory application.
22. The principal grievance of the Plaintiffs is that the rights, if any, flowing from the agreement of 2014 stood exhausted upon completion of Wings “A”, “B” and “C” and that, there exists no agreement whatsoever authorizing Defendant Nos.1 and 2 to utilize either, the suit land or the disputed land of way for the purposes of Wings “D” and “E”. Prima facie, this submission cannot be said to be wholly devoid of substance. The proposal for construction of Wings “D” and “E” admittedly arose pursuant to a revised layout sanctioned in the year 2021 after amalgamation of

additional lands. Whether the earlier contractual arrangement can legitimately be extended to the revised development proposal is itself one of the principal issues arising in the suit and cannot be finally concluded at this stage.

23. Equally, considerable reliance has been placed by the Plaintiffs upon the Sanad, the City Survey records and the subsequent reports obtained during the pendency of these Appeals to contend that the suit land was omitted from the plans submitted for sanction and that the development permissions were procured on the basis of incorrect plans. Defendant No.1 has seriously disputed these allegations. Defendant No. 3 MCGM has also explained in the affidavits filed by them that the permissions were granted on the basis of ownership documents furnished by the project proponent and that the subsequent mutation reflected in the plan dated 18th June 2024 came into existence after the development permissions had already been granted.
24. In my view, these rival contentions raise substantial questions of fact which cannot be conclusively determined at the interlocutory stage. Allegations of fraud, fabrication and suppression of material facts are undoubtedly serious. However, fraud is required to be specifically pleaded and strictly proved. The Court cannot record definitive findings on allegations of fraud merely upon affidavits filed in interlocutory proceedings. Whether Defendant Nos.1 and 2 suppressed material facts or procured development permissions on the basis of fabricated documents are issues which must necessarily await adjudication after evidence is led by the parties. In the circumstances, the decision in *Aafloat Textiles* (supra) is of no assistance to the Plaintiffs.

25. At the same time, it is equally well settled that the grant of municipal sanction neither creates title nor extinguishes existing proprietary rights. Building permissions are granted from the standpoint of municipal law and compliance with the relevant Development Control Regulations. Such permissions do not adjudicate private rights between rival claimants to property. Consequently, even assuming that the development permissions were validly granted, the same cannot conclude the Plaintiffs' civil rights, if any, in respect of the suit land or the disputed land of way. Conversely, no fault can prima facie be found with Defendant No. 3 MCGM merely because it acted upon the ownership documents placed before it by the project proponent while scrutinizing the development proposal. The dispute essentially remains an inter-sé dispute between private parties regarding title and contractual rights.
26. However, there is one significant development which cannot be ignored by this Court, namely, during the pendency of these Appeals, construction of Wings "D" and "E" is stated to have been completed, though the Occupancy Certificates in respect thereof have not been issued. The relief sought by the Plaintiffs in prayer clause (a) of the Notice of Motion before the Trial Court, insofar as it related to restraining further construction has, therefore, been overtaken by subsequent events and is now rendered infructuous. An injunction cannot ordinarily be issued to restrain an act which already stands completed. However, the completion of construction during the pendency of litigation cannot by itself confer any additional equity upon Defendant Nos. 1 and 2, nor can it defeat such rights as the Plaintiffs may ultimately establish at the trial. It is well settled that acts undertaken during the pendency of litigation remain subject to the final

outcome of the proceedings. Accordingly, the completion of construction shall not create any special equities in favour of Defendant Nos. 1 and 2 nor prejudice the rights and contentions of the Plaintiffs in the suit.

27. The Trial Court, while declining to restrain construction, nevertheless restrained Defendant Nos.1 and 2 from using the suit land and the disputed land of way as access to Wings “D” and “E”. Defendant No.1 submits that the two findings are mutually inconsistent. The Plaintiffs, on the other hand, contend that once the Trial Court held that Defendant Nos.1 and 2 were not entitled to use the suit land and the disputed land of way as access, it ought to have also restrained further construction.
28. In my view, the apparent inconsistency noticed by both sides substantially stems from the fact that the Trial Court attempted to balance competing equities while leaving the question of title to be finally decided at trial. The Trial Court was conscious that the Plaintiffs had raised a serious dispute regarding their proprietary rights and the interpretation of the agreement of 2014. Equally, the Trial Court was also alive to the fact that the construction was being undertaken on lands other than the suit land and the disputed land of way. In such circumstances, the Trial Court exercised its discretion by protecting the Plaintiffs’ asserted rights in the said lands while declining to halt construction upon lands which admittedly do not belong to the Plaintiffs. Whether such discretion ultimately requires modification in view of the subsequent completion of construction is a distinct question.
29. A careful perusal of prayer clause (b) of the said Notice of Motion reveals that the said relief of injunction, restraining Defendant Nos. 1 and 2 from

using the suit land and the disputed land of way as access to Wings “D” and “E” was sought by the Plaintiffs on the premise that they are in exclusive possession of the said lands and hence, a declaratory relief to that effect was also sought. For the sake of convenience, the said prayer clause (b) is reproduced hereunder:

“(b) That pending the hearing and final disposal of the suit, the Defendants No. 1 and 2 be restrained by a temporary order of injunction from in any manner interfering with exclusive possession of the Plaintiffs in respect of lands bearing CTS Nos. 220 and 227/1 of Village Eksar, situated at Babhai Gaothan, Borivali (W), Mumbai - 92 and/or entering upon or using as an access for ingress and egress to "D" and "E" wings from Lokmanya Tilak Road.”

30. However, there is absolutely no averment in the plaint in support of the first part of the relief sought in this prayer clause and to the effect that the Plaintiffs are in exclusive possession of the suit land and the disputed land of way. There were also no documents produced by the Plaintiffs before the Trial Court from which, this position has/could have been established. Moreover, the Plaintiffs were also not in a position to identify the exact location of the suit land and the disputed land of way before the Trial Court. Further, it is also an admitted position that the Plaintiffs are merely the co-owners of the disputed land of way. Considering this, it is difficult to understand how the Trial Court, without recording any finding on the first part of prayer clause (b), could have proceeded ahead and recorded a positive finding in favour of the Plaintiffs insofar as the second part of the relief sought in this prayer clause and restrained Defendant Nos. 1 and 2

from using the suit land and the disputed land of way as access to Wings “D” and “E”.

31. The impugned order cannot be sustained insofar as it restrains ingress and egress over the suit land and disputed land of way, for the simple reason that the Trial Court has not recorded any prima facie finding that the Plaintiffs were in exclusive possession of the said lands. In the absence of a foundational finding, namely, that prima facie the Plaintiffs are in possession of the suit land and the disputed land of way, the consequent relief of restraint proceeds on an assumption rather than on an adjudicated or even prima facie established right. A temporary injunction of this nature necessarily presupposes proof of possession, and where the pleadings and material on record do not establish exclusive possession of the Plaintiffs over the specific strip of land sought to be protected, the Court could not have proceeded to exclude the Defendants from using the same as access.
32. Moreover, the present case concerns access over land. In such matters, a court cannot proceed on a bare assumption that possession exists; instead, it must undertake a reasoned analysis of whether the Plaintiff has established possession with sufficient clarity to justify the restraint sought against the Defendant. This requirement assumes greater significance where the relief is not merely protective of a settled possession, but operates to prevent the Defendant from using the land as ingress or egress. The impugned order, to that extent, therefore suffers from a material infirmity.
33. It is also necessary to bear in mind that the balance of convenience which existed when the impugned order came to be passed in October 2023 has

materially altered owing to subsequent events. Construction of Wings “D” and “E” has admittedly been completed. Reports have been prepared pursuant to directions issued by this Court. Clarifications have been furnished by the Defendant No. 3 MCGM regarding the utilisation of FSI and identification of the suit land. At the same time, the Occupancy Certificate has also not been issued in view of the interim orders passed by this Court. Consequently, the Court is now required to mould the interim arrangement in the light of the present factual position while ensuring that neither party suffers irreparable prejudice pending trial.

34. The reliance placed by the Plaintiffs on the decision in *Gangubai Babliya Chaudhary* (supra) is of no assistance to them since the construction of Wings “D” and “E” has already been completed. Hence, there is no question of any irreversible or irreparable situation that would now be caused and suffered by the Plaintiffs if the relief sought in prayer clause (a) of the Notice of Motion is not granted in their favour.
35. Much emphasis was placed upon the offer made by Defendant No.1 to deposit an amount of Rs. 50,00,000/- in order to secure the Plaintiffs’ alleged rights in respect of the suit land. Such an offer cannot, by itself, be construed either as an admission of liability or as a recognition of the Plaintiffs’ title. Equally, the refusal of the Plaintiffs to accept the said proposal cannot prejudice their legal rights. Nevertheless, the willingness expressed by Defendant No.1 to secure the Plaintiffs’ claim is a relevant circumstance while considering an appropriate interim arrangement, particularly when the construction already stands completed, and the suit itself is yet to be tried.

36. Considering the above, I am of the prima facie view that the Trial Court was justified in holding that the disputes relating to the title of the suit land, the extent of the Plaintiffs' rights in the disputed land of way, the true interpretation of the agreement dated 28th August 2014, and the legality of the use of the suit land and the disputed land of way by Defendant Nos.1 and 2 cannot be conclusively determined at the interlocutory stage. The controversy is not confined merely to the interpretation of documents but also involves disputed questions of title, identity of the properties, the effect of subsequent mutations and surveys, and the conduct of the parties, all of which necessarily require adjudication upon oral and documentary evidence. Equally, allegations of fraud and fabrication are matters which must necessarily await trial. Accordingly, any observations made in the present order are purely prima facie and confined only to the adjudication of these Appeals and the Trial Court shall decide the suit uninfluenced by any observations contained herein.
37. The contention advanced on behalf of the Plaintiffs that the agreement dated 28th August 2014 conferred only a limited right to utilize the FSI/TDR relatable to their share in the disputed land of way, namely, C.T.S. No.220 and permitted its use only in relation to Wings "A", "B" and "C" cannot be rejected outright at this stage. Equally, the contention of Defendant No.1 that the agreement conferred a continuing right to use the disputed land of way as access and that such right has been acted upon after payment of valuable consideration cannot also be brushed aside as devoid of merit. The competing interpretations sought to be placed upon the agreement raise arguable questions which cannot appropriately be decided on affidavits

alone.

38. Equally, the interim arrangement presently operating cannot be examined in isolation from the subsequent factual developments. The Court is required to balance competing equities. On the one hand, the Plaintiffs have established the existence of serious triable issues concerning their proprietary rights and the legality of the use of the disputed properties. On the other hand, the construction has been completed, substantial investments have admittedly been made, and the rights of third parties may also become involved. The balance of convenience which existed at the time when the Trial Court passed the impugned order has thus undergone a material change.
39. Accordingly, all three Appeals from Order, namely, (i) Appeal from Order No. 957 of 2023 preferred by the Plaintiffs; (ii) Appeal from Order (St.) No. 31717 of 2023 preferred by Defendant No. 1; and (iii) Appeal from Order No. 995 of 2023 preferred by Defendant No. 2, are hereby disposed of, in terms of the following order:

::ORDER::

- (i) In view of the admitted completion of construction of Wings “D” and “E” of the Veerdhaval Building, the relief sought by the Plaintiffs in prayer clause (a) of the Notice of Motion restraining further construction has been rendered infructuous. Such completion, however, shall not create any equities in favour of

Defendant Nos.1 and 2 and shall remain subject to the ultimate outcome of the suit.

- (ii) The injunction granted by the Trial Court in terms of the second part of prayer clause (b) of the Notice of Motion, restraining Defendant Nos. 1 and 2 from using the suit land bearing C.T.S. No. 227/1 and the disputed land of way bearing C.T.S. No. 220, as access to Wings “D” and “E” of the Veerdhaval Building is hereby set aside.
- (iii) Consequently, in order to balance the competing equities while ensuring that neither party suffers irreparable prejudice and that the final adjudication of the suit is not rendered nugatory, Defendant No. 1 shall deposit a sum of Rs. 50,00,000/- (Rupees Fifty lakhs only) before the Trial Court which amount shall be invested by the concerned Department/Registry of the City Civil Court in a fixed deposit of a nationalized bank as per the Rules and which deposit shall be renewed from time to time and shall be subject to further orders of the Trial Court and the outcome of the suit. Such deposit shall be made on or before 15th August 2026. It is clarified that this deposit shall remain without prejudice to the rights and contentions of all parties.
- (iv) The Trial Court shall decide the suit as expeditiously as possible, and preferably by the end of 2027, being uninfluenced by any observations contained in this order which are purely prima facie in nature and confined only to the adjudication of the three

Appeals before this Court.

- (v) There shall be no order as to costs.
- (vi) All pending Interim Applications taken out in the three Appeals from Orders, if any, also stand disposed of in terms of this order, and all interim orders passed therein, if any, shall stand vacated.

(FARHAN P. DUBASH, J.)

- 40. By an order dated 3rd October 2025 passed in the Appeal/s, this Court had directed Defendant No. 3 MCGM not to grant the Occupancy Certificate in respect of “D” and “E” Wings to Defendant No. 1 till the next date. The said order has been extended from time to time and has continued till today. After pronouncement of today’s order, Ms. Tatake, learned counsel who appears on behalf of the Plaintiffs, seeks continuation of the said relief granted to her clients for a further period of six weeks from today to enable the Plaintiffs to take out an appropriate application seeking similar and/or other reliefs before the Trial Court.
- 41. Considering that the said order has been in operation since 3rd October 2025, the same is hereby extended till 18th August 2026.

(FARHAN P. DUBASH, J.)

Shubham Gadhavepatil