

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Second Appeal No. 301 of 2014

1. Premchand Shivnayak Yadav,
Age : 63 years,
Occupation : Milk Business.
2. Rajendra Premchand Yadav,
Age : 42 years,
Occupation : Milk Business.
3. Surendra Premchand Yadav,
Age : 37 years,
Occupation : Milk Business.
4. Vinod Premchand Yadav,
Age : 35 years,
Occupation : Milk Business.

All R/o. Ward No.1, Shrirampur,
Taluka : Shrirampur,
District : Ahmednagar.

.. Appellants
(Original defendants)

versus

1. Sau. Lata Mahadeo Jangam,
Age : 45 years,
Occupation : Household.
2. Mahadeo Dattatraya Jangam,
deceased through L.Rs. :
 - 2A. Vaibhav Mahadeo Jangam,
Age : 25 years,
Occupation : Education.
 - 2B. Shubham Mahadeo Jangam,
Age : 21 years,
Occupation : Education.

Nos.1, 2A & 2B R/o. Ward No.1,
Shrirampur, Taluka : Shrirampur,
District : Ahmednagar.

.. Respondents
(Original plaintiffs)

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Mr. S.T. Shelke, Advocate, for the appellants.

*Mr. A.B. Chalak & Mr. A.S. Kale, Advocates, for
for respondent nos.1, 2A and 2B.*

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CORAM : A.V. NIRGUDE, J.

DATE : 29TH JULY 2015

PER COURT :

1. Heard learned Counsel for respective parties.
2. This appeal challenges the judgment of the learned lower appellate Court, who decreed the suit which was earlier dismissed by the trial Court.
3. The facts are quite peculiar and on the face of it, both the sides are on the wrong side of law.

One Digambar was owner of plot of land which is situated little beyond municipal limits of Shrirampur town. A proposed Co-operative Society approached him sometime prior to 1986 for purchase of this plot for developing it into housing colony for their members. The proposed Society submitted a so called layout plan of this plot to the Municipal Council, Shrirampur, for approval and it was approved. The layout plan show some area reserved for internal roads, some area for compulsory open space and the remaining area was divided into several housing plots. The Society did not get registration but the members individually

purchased the plots from Digambar and started using them. One of the members was the predecessor of the respondent - plaintiff. It is an admitted fact, that the predecessor of the plaintiff had not developed the plot for construction of house, but after the respondent - plaintiff purchased part of the plot, she started construction on it and developed it as a house. She resided there peacefully. No other house was constructed on remaining plots till 2002. The appellants - defendants somehow managed to purchase all the remaining plots from individual members. They also developed a house on one of the plots. But, thereafter, appellants - defendants converted the land, which they purchased, into a large cattle shed. They started rearing buffaloes on their part of the plot. In the process, they disregarded the internal roads and obstructed the respondent - plaintiff's access to her house. On this cause of action, the suit was filed.

4. The appellants - defendants took up a stand that there was no official layout for the plot. So, the respondents - plaintiffs did not have legal right to the internal roads. Indeed, the plot was proposed for development as housing colony, but apparently no procedure contemplated under law was followed. Nonetheless, the appellants - defendants are not entitled to take this defence. They approached individual members and purchased all the remaining plots one by one. What they received, thus, was plots and not the entire piece of land. In other words, they are bound to respect the arrangement made by their predecessor. When the appellants - defendants purchased the plots, it must be presumed that they intended to develop houses on the plots. Had they used the plots in such manner, there was no reason for the dispute between the parties. All would have been similarly placed requiring internal roads for access, etc. The equity, therefore, demanded that they would not violate the

arrangement that was made as per the scheme that was prepared on *ad hoc* basis by the predecessor. If at all they wanted to convert the land back into agricultural purpose, they ought to have bought out the respondent's - plaintiff's plot. Else the existence of the plot and house of the respondent - plaintiff would continue to trouble them. They remain under obligation to provide proper access to the respondents - plaintiffs as per the original plan. They cannot resile from their obligation. In view of this, the learned Judge of the appellate Court, having noted the illegality in the development of the plot, yet decreed the suit. I do not see any reason to disturb the same.

5. In the result, Appeal fails and the same is dismissed.

6. At this stage, learned Counsel for the appellants makes an oral prayer that the interim stay granted by this Court, vide order dated 9th June 2015, in Civil Application No. 4446 of 2014, be continued for a period of six weeks. The prayer, as sought for, is rejected.

(A.V. NIRGUDE)
JUDGE

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