

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.126 OF 2015

M/s.Trupti Constructions Developers & Builders ... Appellant

Vs.

Shri Kundan Bhikaji More & Ors. ... Respondents

Mr.V.A. Sugdare a/w Agasti Vibhute for the Appellant
Mr.Sanjiv Sawant i/b S.C. Prabhu for Respondent Nos.1 & 2

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 24th AUGUST, 2015

P.C.:

1. Heard.
2. Admit. By consent of the parties, appeal called out forthwith and heard finally.
3. The Appeal is filed against the order dated 12.12.2014 passed by the II Joint Civil Judge Senior Division, Alibag on exhibit 5. Respondent Nos.1 and 2 are the plaintiffs, who filed a civil suit against respondent Nos.3 to 8 for partition and also for injunction against the appellant in respect of the suit land situate at Kasbe Mahad, Taluka Mahad. It is the case of the plaintiffs that the suit land originally belonged to their grandfather Vitthal. Thereafter, the name of Ganpat, the father of respondent Nos.3 and 4 was

entered as Karta. The other two brothers i.e., Bhikaji and Mahadev had also equal right in the said land. Respondent Nos.1 and 2 i.e., the original plaintiffs, are the children of Bhikaji More. Inadvertently, the names of Bhikaji and Mahadev were not entered in the revenue records, after the death of Ganpat. However, in the year 2012, the legal heirs of Ganpat i.e., Respondent Nos.3, 4 and 5 executed development agreement in favour of the appellant, who is the original defendant No.7 and Developer Builder. The appellant thereafter started construction of residential complex. After coming across this construction and the development on the suit land, respondent Nos.1 and 2, the legal representatives of Bhikaji filed suit for partition and injunction against the other respondents and the appellant. In the said suit, an application for injunction and maintaining *status quo* was filed and accordingly, after considering the case of the plaintiffs and the defendants, the trial Judge held that the suit land belonged to Vithhal and thereafter inherited by the three children of Vithhal i.e., Ganpat, Bhikaji and Mahadev. Therefore, the name of Ganpat was entered in the revenue record as Karta. The trial Judge has considered the documentary evidence and pleadings and held that as the plaintiffs i.e., respondent Nos.1 and 2 have $1/3^{\text{rd}}$ right in the suit property, it directed the defendant No.7 to maintain status quo with regard to the suit property and not to construct further. The said order is under challenge.

4. The learned Counsel for the appellant has submitted that few dates are to be taken into account to show the conduct of the original plaintiffs i.e., respondent Nos.1 and 2. He pointed out that in the P.R. Card, name of Ganpat More was entered in 1935. It is the case of the appellant that it is an exclusive and own property of Ganpat. He constructed the house in 1965 and at that time, no objection was taken by Respondent Nos.1 and 2. He died and the names of the legal representatives of Ganpat were entered. However, no names of the plaintiffs and other respondents were entered in the revenue records. On 11.11.2012, the development agreement was entered into between the appellant and the children of Ganpat and the appellant after constructing on the suit land, as on today, have constructed the building, which is 70% completed. He submitted that considering this, the trial Court has erred in granting injunction. This would definitely cause irreparable loss to the appellant / developer.

5. The learned Counsel for the respondent Nos.1 and 2, the original plaintiffs, has submitted that this is an undivided ancestral property and Respondent Nos.1 and 2 have 1/3rd right in the suit property. He supported the order passed by the learned trial Judge. He submitted that this is how the right and interest of the respondent Nos.1 and 2 i.e., the plaintiffs, has been protected, and rightly, the order of injunction is granted

against the appellant.

6. Perused the impugned order, the documents and pleadings. It appears prima facie that the plaintiffs have 1/3rd right in the suit property. On query, the learned Counsel for the appellant submitted that while entering into the development agreement, the appellant paid Rs.32 lacs and allotted 2 flats to the branch of Ganpat. Considering the reasoning given by the learned trial Judge, it cannot be faulted with and if the appellant is ready to protect the interest of the original plaintiffs/respondent Nos.1 and 2, by giving them equal share, the injunction in respect of the construction can be vacated as the building is more or less complete. The learned Counsel for the appellant, on query, submitted that he is ready to reserve four flats towards the plaintiffs' share i.e., the share of branch of Bhikaji.

7. Thus, the Appeal from Order is disposed of with this following order:

- i) The order dated 12.12.2014 passed by the II Joint Civil Judge Senior Division, Alibag on exhibit 5, is hereby set aside;
- ii) The appellant shall reserve four flats admeasuring the flats, which were similarly given to or offered to the legal representatives of the branch of Ganpat. Those flats are earmarked by the

Developer/Builder as Flat Nos.21, 22, 23 and 24 and the appellant shall not create any right, title or interest in any manner in the said four flats;

iii) No third party right will be created in respect of the said flats subject to the outcome of the suit.

iv) The entire property shall not be sold or transferred to third party or the development shall not be assigned to any other person without prior permission of the Court and without giving notice to the plaintiffs.

7. Appeal is disposed of on the above terms.

(MRIDULA BHATKAR, J.)