

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.3 OF 2015

**M/s. Ashwamedh Constructions
Through its Partners**

Mrs. Darshana Nilesh Sawant

: Applicant.

Versus

Smt. Indira Rakesh Kini and ors.

: Respondents.

**ALONG WITH
CIVIL APPLICATION NO.116 OF 2015
IN
CIVIL REVISION APPLICATION NO.3 OF 2015**

Mrs. Indira Rakesh Keni & anr.

: Applicant.

In the matter between

**M/s. Ashwamedh Constructions
Through its Partners**

Mrs. Darshana Nilesh Sawant

: Applicant

versus

Smt.Indira Rakesh Keni and ors.

: Respondents.

Mr. Sandesh D Patil for the Applicant in the CRA.

Mrs. M K Eapen for the Respondent Nos.1 and 2 in the CRA

CORAM : R. M. SAVANT, J.

DATE : 02nd March 2015

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 12/11/2014 passed by the learned Joint Civil Judge, Junior

Division, Thane by which order the learned Judge has decided the preliminary issue raised on behalf of the Applicant herein i.e. the original Defendant No.1 and has ruled that the suit in question is maintainable in the present form and that it has the jurisdiction to try and entertain the same.

2 The subject matter of the suit is land bearing Survey No.329 Hiss No.6(P) Plot No.317 admeasuring 441 sq.mtrs situated at Panchpakhadi, Thane (W). It seems that there were two chawls standing on the said property. The said property was owned by one Waman Keshav Keni of whom the Plaintiff Nos.1 and 2 are declared as his heirs as per the order passed by the Civil Court Thane. The said fact has been averred in paragraph 13 of the plaint. It seems that the said Waman Keshav Keni had issued notice in respect of the said fact in the local news paper "Thane Vaibhav" in its edition on 15/10/2010. To the said notice the Applicant i.e. the original Defendant No.1 replied vide a letter of his advocate dated 19/10/2010 and it is in the reply it was stated that the Applicant i.e. the Defendant No.1 to the suit had obtained the rights of development under the agreement of development dated 8/5/2008 executed by the Defendant No.2 as a power of attorney holder of the original owner Waman Keshav Keni. It was stated in the said reply that the Defendant No.1 had acquired all such rights of development as per the terms and conditions mentioned in the said agreement and the amount of consideration has paid thereunder to the said Waman Keshav Keni. The Plaintiffs have therefore

founded their suit on title which they claim through Waman Keshav Keni and cause of action for the suit was the construction activity commenced by the Applicant herein i.e. the Defendant No.1. In the suit the Plaintiffs have sought the principal relief of injunction against the Defendant Nos.1 and 2 from carrying out construction work or re-development over the suit property and further not to sell, transfer or dealing with or creating any third party interest or otherwise of whatsoever nature in respect of the suit property. The interim relief sought in the suit was in terms of the final relief which has been sought in the suit.

3 The Defendant No.1 filed its written statement and has raised the plea of lack in jurisdiction in the Civil Court to entertain and try the suit in view of the fact that the plot in question has been declared as slum by the competent authority under the provisions of the Slum Act vide Notification dated 9/6/2006 issued under Section 4 of the Slum Act. The jurisdiction of the Court is sought to be questioned on the touchstone of Section 42 of the Slum Act and the bar of the suit is also raised on the said ground. In view of the said question of jurisdiction as also maintainability of the suit raised by the Defendant No.1, that the Trial Court at the outset framed the said issue for being adjudicated.

4 The Trial Court has by the impugned order ruled that the suit is

maintainable and that it has the jurisdiction to try and entertain the suit. The gist of the reasoning of the Trial Court is that having regard to the nature of the relief sought as also having regard to the nature of the rights on the basis of which the said relief is sought, the suit as filed is maintainable. The Trial Court has referred to the fact that the averments disclose that the issue of title to the property in question arises which can only be determined by the Civil Court. As indicated above it is the said order which is taken exception to by way of the above Civil Revision Application.

5 The learned counsel appearing on behalf of the Applicant i.e. the Defendant No.1 sought to reiterate the case of the Defendant No.1 before the Trial Court as regards the jurisdiction of the Civil Court and maintainability of the suit and sought to buttress the case of the Defendant No.1 relying upon Section 42 of the Slum Act. The learned counsel for the Applicant/Defendant No.1 also sought to place reliance on the declaration of Slum issued by Notification dated 9/6/2006. The learned counsel would contend that if that be so, the jurisdiction of the Civil Court to try and entertain the suit as also in view of the declaration of slum, the maintainability of the suit is in question.

6 In my view, it is not possible to accept the said contentions of the learned counsel for the Applicant/Defendant No.1. As indicated above, the suit is founded on title which the Plaintiff Nos.1 and 2 are claiming through the

said Waman Keshav Keni. The Plaintiffs claim that they are the heirs of the said Waman Keshav Keni which declaration, they say, has been given in their favour by the Civil Court at Thane. The Plaintiffs seek to question the development agreement executed by the Power of Attorney of the said Waman Keshav Keni. It is towards the said end that the notice was issued by the Plaintiffs through their advocate in the local newspaper having circulation in Thane. Hence the dispute in the suit raised by the Plaintiffs is as regards their right to the property in question and therefore does not cover any matter which can be said to be within the realm of the Slum Act. The Plaintiffs have as indicated above have claimed the relief on the basis of the alleged title they have to the suit property. It seems that the declaration of slum was issued after the development agreement was executed in favour of the Defendant No.1 by the power of attorney holder of the said Waman Keshav Keni. The Annexure-II has also been issued after the said development agreement executed and the notification issued. However, the said fact, in my view, would not impinge upon the maintainability of the suit as also the jurisdiction of the Civil Court as what the Plaintiffs are in fact seeking are adjudication of their civil rights qua the property.

7 In that view of the matter, there is no error of jurisdiction committed by the Trial Court whilst ruling that it has the jurisdiction to try and entertain the suit in question. Hence no case for exercise of revisionary

jurisdiction of this Court is made out. The above Civil Revision Application is accordingly dismissed.

8 In view of the dismissal of the above Civil Revision Application, Civil Application No.116 of 2015 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]