

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

**APPEAL FROM ORDER NO.905 OF 2014
WITH
CIVIL APPLICATION NO.1088 OF 2014**

M/s.Goodluck Developers and Anr. .. Appellants

Vs.

Mrs.Salma Ibrahim Patel & Ors. .. Respondents

Mr.Raman Paranjpe i/b Mr.Sunil N. Nair for the appellant

Mr.Kamran Shaikh i/b Mr.Oves Ahmed Siddiqui for the respondent
nos.9 to 19

Mr.K.S.Deval i/b Mr.J.S.Joshi for the respondent nos.22 and 24

**CORAM : K.K.TATED, J.
DATED : 16/02/2015**

PC:

1 Heard the learned counsel for the parties.

2 This Appeal from Order is preferred by plaintiff challenging the order dated 11.6.2014 passed by Civil Judge, Senior Division, Thane below Exhibit 5 in Special Civil Suit No. 168 of 2014 rejecting plaintiffs application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction restraining defendant nos.1 to 19 and defendant nos.22 to 24 from executing any development work in the suit land and from entering into suit land

and for prohibiting them from preventing the employees of the plaintiffs from carrying out development work.

3 It is the case of the plaintiff that defendant nos.1 to 8 original owner of the suit land bearing Survey No.131 Hissa No.1/A (admeasuring 27 R) and Hissa No.1/B (admeasuring 2.70 R) total admeasuring 49.70 Gunthas falling within the area of Thane Municipal Corporation agreed to sell by agreement for sale dated 12.10.2006.

4 Thereafter, plaintiff obtained development agreement from defendant nos.9 to 19 on 23.8.2007 and he started developing the suit property. Thereafter defendant nos.22 to 24 obtained development agreement from owner of the suit property i.e. defendant nos.1 to 8 on 26.4.2011 in respect of 621.05 sq.mtrs. area out of the suit property and started developing the same. Hence, the plaintiff filed Special Civil Suit No.168 of 2014 for declaration that the development agreement dated 23.8.2007 between plaintiff no.1 and his partner on the one hand and defendant nos.9 to 19 is valid, operative, legal and for other reliefs. Those are as under:

“a) to declare that the development agreement dated 23rd August, 2007 executed between the Plaintiff No.1 and its partner and the Defendant Nos.9 to 19 is valid, operative, legal and still in force and further declare that the Plaintiff No.1 and its all partners are only entitled to develop the suit land which is fully

described in the schedule attached with the Plaint as part and parcel of the Plaint;

b) to declare that the Plaintiff No.1 and its all partners only are entitled to sale and receive the sale amount of the buildings developed on the suit land in terms of the development agreement dated 23rd August, 2007 between the Plaintiffs and its all partners and the Defendant Nos.9 to 19

c) to declare that the development agreement dated 26th April, 2011 between the Defendant Nos.1 to 8 and Defendant Nos.22 to 24 is bogus, sham, illegal, inoperative and unenforceable;

d) to grant permanent injunction restraining the Defendant Nos.1 to 19 and Defendant Nos.22 to 24 from executing any development work in the suit land which is fully described in the schedule in pursuance of agreement dated 26th April, 2011 and further restrain Defendant Nos.1 to 19 and Defendant Nos.22 to 24 to enter the suit land permanently.

e) To grant permanent injunction restraining the Defendant Nos.1 to 19 and Defendant Nos.22 to 24 from dealing in any manner relating to the suit land in pursuance of the agreement dated 26th April, 2011 and

further restrain them from preventing the employees, workers of the Plaintiffs and Plaintiffs from carrying out the development work;

f) for interim and ad-interim orders in terms of prayers (a) and (e)

g) for such further and other reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.”

5 In the said suit, plaintiff preferred application below Exhibit 5 for injunction restraining defendant nos.1 to 19 and defendant nos.22 to 24 from executing any development work in the suit land and for other reliefs. That application was rejected by the trial court. Hence, the present Appeal from Order.

6 The learned counsel for the plaintiff submits that the trial court erred in coming to the conclusion that the plaintiff started developing the suit property as per development agreement dated 23.8.2007 executed by the defendant nos.9 to 19. He submits that the owner of the suit property defendant nos.1 to 8 entered into an agreement for sale dated 12.10.2006 with defendant nos.9 to 19. Therefore, the defendant nos.22 to 24 have no right, title and interest to disturb their possession and or carry out any construction activities on the basis of subsequent development dated 26.4.2011 executed by owner of the suit property i.e. defendant nos.1 to 8. He further submits that though the respondent nos.22 to 24 completed the construction of the

building may be restrained by an order of injunction from creating further right, title and interest in respect of remaining plots. He further submits that if injunction is not granted, irreparable loss and injury will be caused to them.

7 On the other hand, the learned counsel for the respondent nos.22 to 24 vehemently opposed the present Appeal from Order. He submits that defendant nos.1 to 8 executed development agreement 26.4.2011 with defendant nos.22 to 24 and allowed them to construct the building. He submits that bare reading of the agreement dated 12.10.2006 between owner i.e. defendant nos.1 to 8 and defendant nos.9 to 19 shows that possession of the suit property was not handed over to them. Therefore, there is no question of handing over possession by defendant nos.9 to 19 to the plaintiff for carrying out any construction activities. He further submits that defendant nos.22 to 24 already constructed the building having 28 flats. Out of them, they already disposed of 22 flats by registered agreement of sale. Therefore, there is no question of granting any relief in favour of the plaintiff.

8 I have heard both the sides at length. It is to be noted that in the agreement for sale dated 12.10.2006 between defendant nos.1 to 8 and defendant nos.9 to 19 there is specific clause stating that possession will be handed over at the time of final conveyance. Clause 13 of the said agreement reads thus:

“13. That the TRANSFERS have agreed to handed

over the SAID PLOT to the TRANSFEREES on as and when basis at the time of final conveyance.”

9 It is not the case of the plaintiff that the defendant nos.1 to 8 executed final conveyance either in favour of defendant nos.9 to 19 or in favour of the plaintiff. Therefore, prima facie it is not possible to hold that the plaintiff is in possession of the entire suit property.

10 Considering these facts, reason given by the trial court at the time of rejecting plaintiff's application below Exhibit 5, I do not find any reason to interfere with the same.

11 Appeal from Order stands dismissed.

12 In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)