

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 893 OF 2012

- 1 Dharyashil Dattajirao Khanvilkar
Age 81, occ. Nil, resident of 521,
E Ward, Shahupuri, Near Railway
Gate No. 1, Kolhapur
- 2 Ramchandra alias Ramrao Dattajirao
Khanvilkar, age : 74,
- 3 Shivajirao Krishnarao Khanvilkar
(deceased) through legal heir
- 3A Smt. Pushpamala Shivajirao Khanvilkar
Age 78, Occ. Household, r/o 521, E
Ward, Shahupuri, Near Railway Gate No. 1
Kolhapur
- 3B Shri Udaysingh Shivajirao Khanvilkar
Age 50, Occ. Business r/o As above
- 3C Smt. Sujata Hemant Salvi
Age : 48, Occ. Household
C/o. Hemant M. Salvi, California
Beverages Ltd. Plot No. 1644
Malambi Road, Lusaka, Zambia, Africa
- 3D Smt. Pranita Ajay Jadhav
Age – 44, Occ. Household
c/o Ajay Jadhav, 505, Oriental Ave,
Mamaroneck, New York – 10543, U.S.A.

- 4 Smt. Malati Madhavrao Khanvilkar
Occ. Nil, r/o 521, E-Ward, Shahupuri
Near Railway Gate No 1, Kolhapur
- 5 Khanvilkar Commercial Complex
Condominium, Society established under
Maharashtra Apartment Ownership Act
(for appellants Nos 1 to 5 Power of Attorney
holder Udaysing Shivajirao KhanvilkarAppellants
(Except 3A)

Versus

- 1 Rajendrakumar alias Atikant Adiraj Patil, age
62, Occ. Business & Agri, r/o Shop No. 4,
Khanvilkar Commercial Complex, 521 E
Ward, Shahupuri, Near Railway Gate No. 1,
Kolhapur
- 2 Sou, Dhanshri alias Rekha Gulabrao
Sonpethkar, age : 56, Occ. Household &
Business, r/o. 462/3, B, Jadhavwadi, Market
Yard, Kolhapur
- 3 Kolhapur Municipal Corporation
Through Commissioner, Kolhapur
Municipal Corporation Office
Bhausingji Road, KolhapurRespondents

Mr Vijay D Patil for the appellant.

Mr Ajay D. Magadum i/b. Mr.S. S. Patwardhan for respondent no. 3.

CORAM : R. K. DESHPANDE, J.
DATE : 3rd AUGUST, 2015.

ORAL JUDGEMENT :

1. In the Regular Civil Suit no. 81 of 2002, the trial Court has
passed a decree on 29/8/2011 directing the defendant to construct the

toilet of 8" x 5" measurement highlighted by letter "L" in the map on the southern side. The Court has passed a decree directing the defendant to remove the sliding doors to the south of gate No.1 and also to remove other doors on western and southern side. The decree is confirmed in appeal by the lower appellate Court. Hence, the defendant is against the concurrent findings of facts before this Court.

2. After hearing the learned counsel appearing for the parties, the decree passed by the trial Court can be slightly modified and made subject to the grant of permission by the local authorities for construction of toilets at the place. The defendant shall ask for permission within 15 days from the date of receipt of copy of this judgment to construct toilet in terms of the decree passed by the trial Court and that application shall be considered by the Kolhapur Municipal Corporation within a period of 3 months from the date of receipt of such application. If the sanction is granted, the decree shall become executable. The Corporation shall, however, not get influenced by the fact that after demolition of toilet, the defendant has carried out construction somewhere else, utilizing the FSI. In such case, the Corporation may proceed to demolish some other portion, so as to bring the building within the limit of FSI.

3. Similarly, defendant shall be at liberty to apply to the Corporation for regularisation of the openings which shall also be considered within a period of 3 months from the date of such application, in accordance with law.

4. With these observations, the second appeal is dismissed.

(R. K. DESHPANDE, J.)