

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.752 OF 2015

a/w
CAA/910/2015

M/s.Neptune Developers Ltd. ... Appellant

Vs.

Smt.Fasubai Narayan Choudhary & Ors. ... Respondents

Mr.Akshay Patil i/b Mr.Thorat Mayur for the Appellant
Mr.Deepak C. Nathu for Respondent Nos.1, 3 to 10

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 1st DECEMBER, 2015

P.C.:

1. In this appeal, the order dated 22.8.2014 passed by the learned Ad-hoc District Judge, Kalyan allowing the exhibit 45A in Civil Appeal No.16 of 2012 is challenged. By the said order, the learned Judge has restrained respondent No.10 i.e., the present appellant, from creating third party interest and carrying out the development on the property comprising Survey Nos.5/4, 16/6, 65/3 and 81/4 situate at Village Ambivali, Kalyan, Thane. Respondent No.10 is subsequently added as party in the Appeal. He is a Developer. Respondent No.1 who is a defendant No.1, has sold his portion of the land out of the total suit property to Respondent No.10, i.e., the present appellant. The appellant in civil Appeal No.16 of 2012 i.e., the respondent No.1 in the present appeal has filed civil suit No.292 of

1998 for partition and injunction. The said suit was dismissed on 28.8.2011 against which the civil Appeal No.16 of 2012 is filed. During the pendency of the original Suit, the order of status quo was passed in favour of the plaintiff by the trial Court which continued in appeal and by order dated 1.2.2012, the said order of status quo further continued. During the continuation of the status quo, respondent No.2 i.e., the original defendant conveyed a portion of the suit property i.e., Survey No.5/4, 16/6, 65/3 and 81/4 to Respondent No.10, who is a Developer, vide registered sale deed on 23.4.2012. Thereafter, in July, 2012, application for contempt was preferred by the original appellants in civil Appeal. However, thereafter, on 10.12.2012, during the pendency of that application, a purshis was filed by the appellant, wherein it is mentioned that they had knowledge that respondent No.1 i.e., the original defendant No.1 has sold the property to the present appellant, she is ready to proceed with the appeal provided respondent No.1 i.e., the original defendant No.1 maintained status quo with regard to rest of the land i.e., survey Nos.8/10 (part), 61/2, 84/3, 86/1, 89/5, 89/9 and 90/5 in village Ambivali. Pursuant to these purshis, the Court on 10.12.2012, by accepting the statement made by the appellant, directed to maintain status quo by the parties in respect of the suit property except survey Nos.5/4, 61/6, 65/3 and 81/4 of village Ambivali. Thereafter, again the appellant in civil appeal i.e., Respondent No.1 filed application under Order 39 Rule 1 i.e, Exhibit 45A and prayed that the

respondent No.10 be ordered not to proceed with the development and not to create third party right or part with possession and maintain status quo. The said application was allowed against respondent No.10 and hence, this appeal is filed.

2. The learned Counsel for the appellant pointed out all the orders passed by the Courts below. After going through the purshis and the order passed thereon i.e., 10.12.2012, it is clear that the appellate Court as on that day has excluded the property which was purchased by respondent No.10 from the order of status quo. The learned Counsel for Respondent Nos.1, 3 to 10 is also present and concedes to these submissions.

3. In view of this, once the property is excluded from the order of status quo, by the same Court, again, it is unfair to put restriction on the same property by granting injunction. Therefore, it is vacated.

4. Thus, the appeal is allowed.

5. Civil Application stands disposed of.

(MRIDULA BHATKAR, J.)