

Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 3008 OF 2010
IN
SUIT NO. 2678 OF 2010**

Parwan Construction Pvt. Ltd. ...Plaintiffs
Vs.
Ranjitsingh Linga & ors. ...Defendants

Mr. Vivek Walavalkar a/w. Mr. Sameer R. Bhalekar
& Mrs. Vidita S. Bhalekar, Advocates for the Plaintiff
Mr. S.S. Joshi, Advocate for Defendant Nos. 1 & 2
Mr. Neel Pungaliya a/w. Ms. Sheetal Mehta
i/b. M/s. Adhia & Adhia, Advocate for Defendant No.3

CORAM : MRS. ROSHAN DALVI, J.
Date of Reserving the Judgment : 26th March, 2015
Date of Pronouncing the Judgment : 8th April, 2015

JUDGMENT:

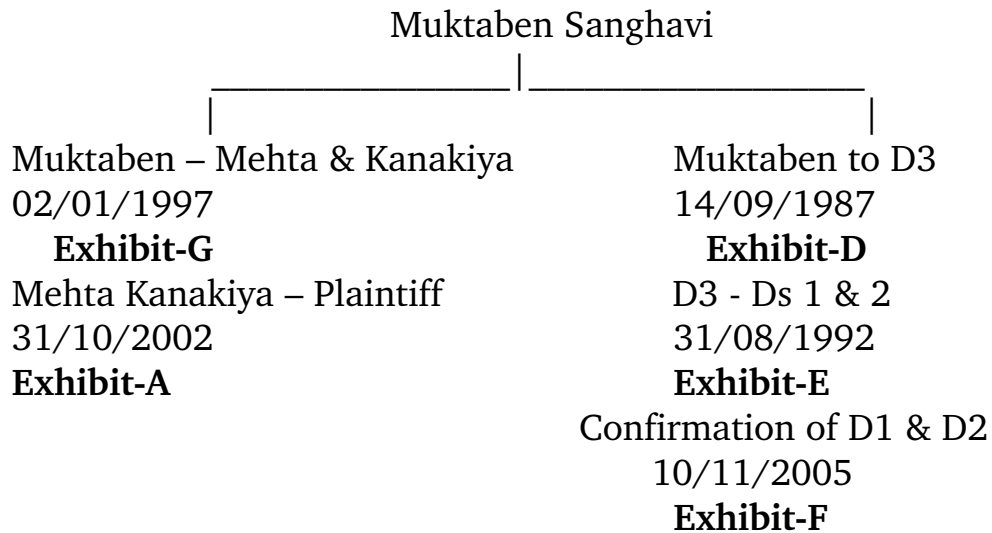
1. The plaintiff claims ownership rights over the larger property in which the suit property is situated from one Muktaben Sanghavi. The defendants claim their rights in respect of suit property which is Unit No.1-C admeasuring 976 sq. ft from Muktaben Sanghvi. Muktaben Sanghvi has executed a conveyance of her entire property in favour of one Mehta and Kanakiya on 2nd January, 1997, **Exhibit-G** to the plaint. Mehta and Kanakiya have conveyed the suit property to the plaintiff on 31st October, 2002 **Exhibit-A** to the plaint.

2. The entire property of Muktaben Sanghvi consisted of a plot of land with two structures thereon being Shed-I and Shed-II and an open space in between and surrounding the two sheds surrounded by a compound wall. Part of the property has gone in road widening from where the compound wall has been demolished. Part of shed-I has also gone in road widening. That part has yet not been demolished.
3. Shed-I consisted of about 12 galas. They are tenanted to different persons. This suit is concerned with unit / gala No.1C admeasuring 976 sq. ft.
4. Defendant No.3 (D3) was the tenant of Muktaben Sanghavi in respect of unit / gala No.1-C. Muktaben Sanghavi executed an unregistered agreement with D3 to convert the tenancy rights of D3 into ownership rights in respect of unit / gala No.1-C upon payment of rent of 150 months on 14th September, 1987, **Exhibit-D** to the plaint. D3 became the owner of unit / gala No.1-C accordingly. D3 created a tenancy in favour of defendant Nos. 1 and 2 (Ds 1 & 2) in respect of unit / gala No.1-C on 15th May, 1991. D3 entered into an unregistered agreement with Ds. 1 & 2 to convert that tenancy of unit / gala No.1-C in favour of Ds 1 & 2 on 31st August, 1992, **Exhibit-E** to the plaint. Ds. 1 & 2

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unilaterally executed a confirmation deed to register that unregistered agreement on 10th November, 2005, **Exhibit-F** to the plaint.

5. The aforesaid transfer of the entire plot of land of Muktaben Sanghavi and of one of the tenants in one of the sheds of Muktaben Sanghavi in favour of the plaintiff on one hand and in favour of Ds. 1 & 2 on the other can be best illustrated as below:



6. Both parties, therefore, claim their respective rights from one common owner, Muktaben Sanghavi. The plaintiff claims ownership rights of the entire plot of land of Muktaben under the **registered conveyance** dated 31st October, 2002, **Exhibit-A**. Ds 1 & 2 also, surprisingly, claim ownership rights to the entire plot of land of Muktaben under an **unregistered agreement** dated 31st August 1992 **Exhibit-E**.

7. Both the documents relied upon by the parties would constitute transfer of the right, title and interest of Muktaben to them. For relying upon those documents through which both of them claim to be transferred the right, title and interest of the entire plot of land of Muktaben, it is plain to see, that their respective documents must be registered as per the mandate under Section 17(1)(b) of the Registration Act, 1908 for creation of the right of ownership in them and for transfer of the ownership rights of Muktaben to them.
8. The plaintiff has sued for a declaration that Ds 1 & 2 have no right, title and interest to remain in use and occupation of unit / gala No.1-C admeasuring 976 sq. ft, and for recovery of possession of the said unit from them as also for removal of certain unauthorised construction by them and for the relief of various injunctions restraining them from entering upon the larger property or parking their vehicles thereon or preventing the plaintiff free access to the open spaces on the suit plot of land, interfering with their construction of compound wall, 2 galas / units and a security cabin, for certain damages, access etc.
9. The above notice of motion is for the relief of injunction restraining transfer, alienation and creation of third party rights in the suit premises or any part thereof or from carrying

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out any construction therein, from entering upon the larger property, parking their vehicles thereon, restraining the plaintiff's free access in the open space, interfering with the plaintiff from constructing the compound wall, 2 gates and a security cabin and for appointment of Court Receiver in respect of the suit premises.

10. There are similar suits filed by the plaintiff against the occupants of the other 12 units / galas. Those suits have been transferred to the Bombay City Civil Court in view of the pecuniary jurisdiction of those suits. Those defendants are also stated to have claimed similar rights as Ds 1 & 2 herein under similar unregistered agreements executed by Muktaben Sanghavi with them or their predecessor-in-title in respect of the units / galas in their occupation in Shed-I on the larger property of Muktaben Sanghavi.

11. Though the unregistered agreements of Ds 1 & 2 cannot be relied upon by Ds 1 & 2 and their right, title and interest transferred to them from Muktaben cannot be considered by the Court thereunder it would be interesting to read not only the documents of the plaintiff to consider the rights claimed by the plaintiff, but also unregistered documents of the defendants to see the rights claimed by Ds. 1 & 2 under them to consider the reliefs claimed by the plaintiff in the suit and in the notice of motion.

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12. Muktaben Sanghavi owned the entire property. One shed belonged to her and has been in possession of the plaintiff as having been conveyed initially to Mehta and Kanakiya and then to the plaintiff as a part of the entire property consisting of open spaces.
13. Ds 1 & 2 who claimed right to the entire property under the unregistered agreement have been actually given ownership rights only in respect of the unit / gala which was initially tenanted to them by Muktaben. That is unit / gala No.1-C.
14. The initial agreement dated 14th September, 1987, **Exhibit-D** to the plaint between Muktaben and D3 shows that Muktaben is the owner of unit / gala No.1-C in shed-I and described in the schedule to the agreement. The schedule shows a property bearing CTS Nos. 183 and 34 admeasuring 4664.60 sq. mtrs. Hence Muktaben was the owner of the entire property as also unit / gala No.1-C therein. This agreement shows that D3 occupied unit / gala No.1-C, was a monthly tenant paying a monthly rent of Rs.325/- to Muktaben. Muktaben was interested in developing the property utilizing the balance FSI available on the property and thereafter forming a co-operative society and conveying the said property to the society. D3 had an option to purchase

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the tenanted premises in his occupation on payment of 150 months rent to Muktaben under the tenancy agreement dated 1st July, 1985. D3 approached Muktaben to purchase the unit / gala No.1C admeasuring 976 sq. ft shown in the plan annexed to that agreement by converting the tenancy into ownership basis upon consideration of 150 months rent aggregating to Rs.48,750/-. Upon such recitals Muktaben agreed to grant, transfer, sell and assign to D3 gala / unit No.1C admeasuring 976 sq. ft. for his exclusive use as purchaser upon the consideration of Rs.48750/- under clause 1 of the agreement. **(Muktaben did not agree to grant transfer, sell or assign to D3 the entire property admeasuring 4664 sq. mtrs to D3).**

15. Under clause 3 of the said agreement Muktaben inter alia covenanted and declared that she was the exclusive owner of the property described in the schedule (it was 4664 sq. mtrs.) she had authority to sell the **unit / gala** to D3.

16. Under clause 3(b) of the agreement she gave liberty to D3 to construct a toilet in the unit / gala and to repair and renovate and alter the **unit / gala** as per plans sanctioned by the BMC.

17. Under clause 6 of the agreement she remained entitled to use the available FSI above the unit / gala in the property

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described in the schedule. She was entitled to put the foundation beams and pillars within the area of 976 sq. ft unit / gala. **(D3 had no right to construct anything in the entire property described in the schedule to the agreement except the right to construct the toilet in his unit / gala and repair it as per plans of the BMC).**

18. Under clause 7 of the agreement D3 agreed to co-operate with Muktaben to put up the construction such as not to affect the unit / gala No.1C of D3.

19. Under clause 8 of the agreement upon the formation of the Co-operative Society in respect of the units to be constructed by Muktaben on her property she was to admit D3 as the member and D3 agreed to be a member of the Co-operative Society.

20. Under clause 9 of the agreement there was no right upon D3 to the right, title or interest of any kind over the immovable property and a right would accrue only upon the execution of the conveyance in favour of the co-operative society **(such right upon D3 would be to be a member of the society in respect of unit / gala No.1C in which his tenancy right was converted into ownership right).**

21. Under clause 11 of the agreement D3 was entitled to

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sell or transfer or sublet his unit / gala No.1C to any third party which person would be accepted as owner by Muktaben.

22. Under clause 12 of the agreement Muktaben would have no right, title or interest in the unit / gala No.1C which was sold to D3 (**Muktaben would continue to have ownership rights over the entire property other than the unit / gala No.1C).**

23. Upon such limited right of D3 only in respect of unit / gala No.1C, D3 executed another unregistered agreement with Ds 1 & 2 on 31st August 1992, **Exhibit-E** to the plaint exercising rights which they never had and conveying the title which they never had to Ds 1 & 2. Under that astounding unregistered document D3 is shown as the Vendor and owner of gala / unit No.1C admeasuring 976 sq. ft but the property described in the schedule to the agreement is the entire property of Muktaben. He is shown to have received Rs.3000/- as rent from Ds 1 & 2 who are shown as purchasers. He is shown to be interested in developing the entire property by utilising the balance FSI available and thereafter forming a co-operative society of intending purchasers and to convey the property to the society when formed. (**This was not the right conveyed to D3 by Muktaben under his unregistered agreement dated 14th**

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July, 1987, Exhibit-D to the plaint).

24. D3 is shown to have created a tenancy right in favour of Ds 1 & 2 on 15th May, 1991 with an option to purchase that portion of the premises on payment of a lumpsum amount of Rs.4.21 lakhs.
25. Ds 1 & 2 had approached D3 to purchase gala / unit No. 1C by converting the tenancy into ownership on payment of Rs.4.21 lakhs.
26. Upon such recitals D3 agreed to grant, transfer, sell and assign to Ds 1 & 2 gala / unit No.1C admeasuring 976 sq. ft as purchasers upon a consideration of Rs.4.21 lakhs.
27. Under clause 3 D3 covenanted and declared certain aspects:
 1. In clause 3(b) of the said agreement D3 claimed to be the sole and exclusive owner of the property described in the schedule and the sheds standing thereon, which is shown to admeasuring 4664.60 sq. mtrs. **(D3 was never conveyed this property under his agreement dated 14th September, 1987).**
 2. Under clause 3(c) of the said agreement D3 declared that he had right to transfer **unit / gala No.1C**

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to Ds 1 & 2 as purchasers.

3. Under clause 4 of the said agreement Ds 1 & 2 had the liberty to carry out repairs, renovations, alterations inside the existing structure as per the permission of the BMC. **(This was only the right to carry out repair, renovations and alterations which D3 had to construct being the toilet in unit / gala No.1C that would be subject to BMC permission).**
4. Under clause 7 of the agreement D3 claimed to be entitled to use the available FSI above unit / gala No.1C and to put a slab thereon above the ceiling of the unit and to put foundation beams or pillars within the area of 976 sq. ft of unit / gala No.1C. **(It was the right of Muktaben to use the available FSI which was not given to D3 under his agreement dated 14th September, 1987.)**
5. Under clause 8 Ds 1 & 2 were to co-operate with D3 in putting up the construction upon unit / gala No.1C over its ceiling **(which D3 had no right to construct).**
6. Under clause 9 of the said agreement upon the formation of the society in respect of the units / galas to

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be constructed by D3 (**which D3 had no right to construct under his own agreement**) D3 agreed to admit Ds 1 & 2 as members of the co-operative society by issuing share certificates in favour of Ds 1 & 2 as the purchasers !

7. Under clause 10 of the agreement (as in clause 9 of the agreement of D3 dated 14th September 1997) Ds 1 & 2 had no right conferred upon them in the immovable property (just as D3 had no right under clause 9 of his own agreement) until the execution of the conveyance in favour of the co-operative society.

8. Under clause 13 of the agreement Ds 1 & 2 had the right to sell, dispose off and sub-let unit / gala No.1C (**just as D3 had such right under clause 9 of his own agreement**).

9. Under clause 15 of the agreement D3 agreed not to have any right, title and interest in unit / gala No.1C (**just as Muktaben agreed not to have any right, title and interest in respect of unit / gala No.1C in D3**).

28. It is seen that both the agreements are not happily worded. Both the agreements are for conversion of tenancy rights to ownership rights of only unit / gala No.1C which

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was tenanted initially by Muktaben to D3 and later by D3 to Ds 1 & 2. D3 and later Ds 1 & 2 can have ownership rights only in respect of the said unit / gala No.1C. They can have and they had specifically no other right in respect of any other part of Muktaben's property consisting of 2 sheds and open spaces under CTS Nos. 183 and 34 admeasuring 4664.60 sq. mtrs. Aside from the conversion of the tenancy rights into ownership rights Muktaben continued to be the owner of the remaining property. Incidentally though not required under the unregistered agreement, under which no right can be claimed, none is claimed in any civil action filed by D3 or Ds 1 & 2. Muktaben who was interested in developing her own plot of land by utilizing the balance FSI available thereon agreed to make D3 a member of the society to be formed by her upon such development and construction and to transfer and convey the entire plot to such society. Such development and construction was to be made only by Muktaben Sanghavi. D3 had no right in such construction or development. Such construction or development would be under sanctioned plans. Muktaben has not submitted any sanctioned plans. D3 or Ds 1 & 2 have not seen or inspected any plans or specifications.

29. Merely because the plot was to be developed and constructed upon, balance FSI was to be utilized, co-operative society was to be formed and the plot of the land conveyed to

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the co-operative society which was the intention of the Muktaben which never materialized into any action until the filing of the suit and thereafter, Ds 1 & 2 claim that their unregistered agreement to convert their tenancy into ownership rights is an agreement under the Maharashtra Ownership Flats Act 1963 (MOFA) as a prospective purchaser being a flat purchaser / unit purchaser. It is easily seen that the agreement in favour of D3 or Ds 1 & 2 is not an agreement under Section 4 of MOFA. It is not executed by a developer as a Promotor as under Section 4 is defined in Section 2 (c) of MOFA because Muktaben never sought to construct a block or a building or flats for selling them to other persons or to a co-operative society under any sanctioned plans as required to be disclosed under Section 7 of MOFA. It was only her intention to so construct units over unit / gala No.1C as also other units tenanted to other tenants for utilizing the available FSI by her on her own plot of land which remained with her and it was not transferred to D3 and consequently to Ds 1 & 2.

30. It is trite that none can transfer a better title than what he has. D3 had title only to unit / gala No.1C upon conversion of his tenancy into ownership rights. D3 could, therefore, transfer only unit / gala No.1C to Ds 1 & 2 as tenants and / or as purchasers. D3 was never given any right in the available balance FSI which was to be utilized by

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Muktaben for development of her property and which can be done only upon plans sanctioned by the BMC.

31. Consequently D3 and later Ds 1 & 2 are not flat purchasers as contemplated under MOFA. They are only owners of unit / flat No.1C. They would have no right in respect of any other portion of the property of Muktaben. They however would be entitled to all rights that the tenant would have in respect of his tenanted premises. That would be the right of having access to the tenanted premises from the land appurtenant to the tenanted premises. Such right would be conferred upon the tenant becoming a owner of the tenanted premises. This would mean and include the right to have access from the road to the tenanted premises and to park the vehicles of the tenant / owner on the land appurtenant to the tenanted premises.

32. Section 4 of MOFA gives a mandate in its sub-title itself for registration of the agreement to be entered into by any promoter with any flat purchaser in respect of any premises in a proposed co-operative society for taking the flat / shop / industrial unit on ownership basis upon deposit of advance payment.

33. In the case of **The Association of Commerce House Block Owners Ltd. Vs. Vishandas Samaldas & Ors. 1981**

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Bom.C.R.716 (DB) Justice Chandurkar, as he then was, set out the parameters of Section 4 and held it to be mandatory. It was held that noncompliance of the provisions of Section 4 would result in an invalid transaction.

34. It is held in paragraph 44 of the judgment that if the promoter does not register the agreement the purchaser himself may present it for registration. It is observed in paragraph 44 of the judgment that if the promoter does not register such an agreement “it does not appear to us that the purchaser is helpless” to have the agreement of sale registered.

It is further observed that the words “under the Indian Registration Act” makes it clear that the mechanics of registration or the procedure for registration as provided in the Registration Act would become automatically attracted under Part IV and VII of the Registration Act.

It is also observed that under Section 32(a) of Part VI of the Registration Act a document is to be presented for registration by a person executing it or claiming under the document and hence if the promoter declined or avoided to get a document registered, it would be perfectly permissible for the person claiming under the document, namely, the purchaser to present it for registration.

It is observed that there was no question of such a transaction being binding between the parties. In paragraph

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52 it is observed thus:

“52. Having taken the view that the provisions of Section 4 are mandatory and the agreement was, therefore, statutorily required to be registered the plaintiff cannot found any rights on such an agreement and the agreement must be treated as invalid and ineffective”.

35. In the case of **A.K. Velu Vs. K.S. Ramkrishnan & Ors.** **1983(1) Bom.C.R. 338** it has been held that due to the mandatory nature of Section 4 of MOFA even criminal liability cannot be imputed upon a party to an unregistered agreement since no right can be founded on such an agreement and such an agreement must be treated as invalid and ineffective.

36. Gala / unit No.1C is an industrial unit. The rules applicable to industrial units must be seen in respect of such rights. Mr. Joshi on behalf of Ds 1 & 2 produced before the Court the notification dated 7th January, 1967 of the Urban Development, Public Health and Housing Development Sachivalaya Bombay showing the Development Control Rules then modified under the Bombay Town Planning Act, 1954. The relevant rule is rule 39 relating to layouts dealing with residential – commercial zones and industrial plots.

37. Under Rule 39(a)(ii), (a) (iii) & (a) (vi) 15% of the

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holding must be reserved for recreational space (RG) which shall not be less than 450 sq. yds and having a means of access. Aside from the RG under rule (ix) parking and loading – unloading spaces is required to be shown on the plan. In all industrial plots under rule 39(i) &(ii) 10% of the area of the plot is required to be provided as amenity open space having a means of access to be conveniently utilized by the persons working in the industry. Under rule 39(iii) parking and loading – unloading space is to be shown on the plans.

38. Hence it is seen that under the rules then prevailing there had to be an amenity open space which was equivalent to 10% of the total area to be utilized by all the workers in the industry. There had also to be parking and loading – unloading space to be provided. The parking and loading – unloading space would be other than the amenity open space.

Reading rule 39 with regard to residential and commercial zones along with the rules with regard to the industrial plots it becomes clear that in residential and commercial zones there has to be a **RG of 15%** of the area with a minimum of 450 sq. yds having an **independent means of access**. In industrial plots there has to be an **amenity open space of 10%** of the total area of the property having a **proper means of access**.

39. Aside from the RG and the amenity open space there has to be parking and loading – unloading spaces. Hence the parking and loading – unloading spaces would be at a place other than the amenity open space or the RG. The parking as also loading – unloading cannot be in the amenity open space.

40. Amenity open space in the suit plot of land is between the two sheds as shown in the sketch plan, **Exhibit-W** to the plaint. In fact the sketch plan would show the 10% of the entire plot of land cannot have the amenity open space anywhere other than between the two sheds; no other open space is 10% of the suit plot of land having a proper means of access which can be conveniently utilized by the workers of the industry. That space is shown as the RG / garden in the sketch plan, **Exhibit-W** by the plaintiff who seeks to develop the entire property. Consequently in the space between the two sheds Ds 1 & 2 cannot park any of their vehicles. Similarly in the said space between the two sheds Ds 1 & 2 cannot also park any trucks for loading and unloading purpose.

41. The Ds. 1 & 2 would need to park their car or trucks for loading – unloading purposes. They would have had the right to park the car or the right of loading – unloading from trucks

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as tenants also. The parking of the car would be on the land appurtenant to the tenanted premises or in the specific portion of parking shown in the original plan. The original plan of construction of the 2 sheds as industrial sheds is stated to be 1954. The original plan is not produced by either party. Ds 1 & 2 have sought to produce a building completion certificate which is dated 21st June 1955, **Exhibit-C** in the affidavit of sur-rejoinder of Ds 1 & 2. Their RTI inquiry with the MMC has resulted in the information that the old file is not available with the MMC despite diligent search. The plaintiff also does not have and has not produced the original plan. Where the parking has been shown in the original plan is, therefore, not known. Mr. Walavalkar on behalf of the plaintiff contended that in 1954 – 1955 there were no 13 galas. Hence there can never have been 13 car parking spaces provided in the original plan. The original plan would have had at best one parking space.

42. The plaintiff would allow Ds 1 & 2 as also the other owners of the other galas (whose suits are transferred to Bombay City Civil Court) to park their cars alongside their galas in the portion of the suit premises on either side of shed-I tenanted to a number of tenants and now owned by them leaving enough space for access to all other owners of the galas / units as also to the plaintiff who is the owner of Shed-II claiming through Muktaben. This would be the land

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appurtenant to the tenanted premises of Ds 1 & 2 which could be enjoyed by Ds 1 & 2 to the extent of parking of their car alongside their galas / units even if such parking is not shown in the plan. If Ds. 1 & 2 would claim to park their car in any other place in the entire property of Muktaben later conveyed to the plaintiff they must show such parking shown in the plan of 1954. In the absence of such car parking specifically shown Ds 1 & 2 cannot park their car anywhere other than the aforesaid space appurtenant to their tenanted (and now their owned) premises as per Rule 39(iii) relating to layout in industrial plots relied upon by Ds. 1 & 2 themselves.

43. Mr. Walavalkar would also argue that there is no question of Ds. 1 & 2 loading – unloading their goods from the trucks in the space between sheds I & II which is the amenity open space (also, perhaps erroneously called RG / garden by the plaintiff) which is far from the doors of the respective galas of Ds 1 & 2 as also the other tenants or owners even as a matter of convenience. Such amenity open space shall have to be kept open with proper means of access for use of all the persons working in the industry as per Rule 39(ii) in the layout of industrial plots relied upon by Ds 1 & 2 themselves.

44. The plaintiff desires to construct the compound wall on

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the road to the south of plaintiff's property. Mr. Walavalkar showed the Court the sketch plan, **Exhibit-W** to the plaintiff which shows the compound wall around the entire property of the plaintiff except on the South side. The original compound wall has been demolished on the South side upon a part of the property having gone into road widening as setback area. The road shown in the photographs, **Exhibit-V** to the plaintiff has been broadened to that extent. A new compound wall is sought to be put up leaving the setback area. A part of shed I has also gone in road widening, but has not yet been demolished. The plaintiff has put up certain barrels where the plaintiff desires to construct a compound wall leaving a space for 2 gates and a security cabin.

45. It is seen that the space on the sides of shed I to the East and West is the access to Shed II of the plaintiff. Ds 1 & 2 (as also the other owners of the other units / galas) would require to park their cars outside their respective units / galas. The remainder of the space would be required for access of trucks for loading – unloading of goods outside the industrial galas / units as also for access of the plaintiff and persons claiming through the plaintiff as also the other workers in the industry.

46. The construction of the compound wall, at least before the trial and pending the suit is not seen to be either

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necessary or in the interest of all these persons. The construction of the compound wall is in fact in the nature of mandatory relief sought by a prohibitory injunction.

47. The reliefs claimed by the plaintiff have to be decided and are accordingly granted as follows:

1. Defendant Nos. 1 & 2 shall not sell, alienate, encumber, part with possession or create any third party rights in any unit / gala pending the suit.
2. Defendant Nos. 1 & 2 shall be entitled to use, occupy and enjoy unit / gala No.1C.
3. Defendant Nos. 1 & 2 shall also be entitled to park their car outside unit / gala No. 1C in the space appurtenant to unit / gala No. 1C so as to leave free access to all other unit /gala holders as also the plaintiff and persons claiming through the plaintiff.
4. Defendant Nos. 1 & 2 shall be entitled to carry out loading – unloading of trucks in respect of their goods outside unit / gala No.1C.
5. Defendant Nos. 1 & 2 are restrained from entering upon the larger property seen to be belonging to the

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plaintiff except for enjoying the open space between sheds I & II as amenity open space along with all persons working in the industry keeping the said space open at all times and free from parking or loading – unloading.

6. Defendant Nos. 1 and 2 are restrained from parking their vehicles or carrying on loading – unloading from any trucks in the space between sheds I & II being used as amenity open space.
7. Defendant Nos. 1 & 2 are restrained from preventing the plaintiff and/or all persons claiming through the plaintiff from having free access in the open space on the larger property belonging to Muktaben and later to the plaintiff.
8. The relief of an injunction against Ds 1 & 2 from interfering with the plaintiff in constructing the compound wall, 2 gates and a security cabin is not granted as it is in fact a mandatory relief.
9. The appointment of Court Receiver is not pressed and is not granted.
10. The Notice of Motion is disposed off accordingly.

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11. There shall be no order as to costs.
12. This order is stayed for 2 weeks.

(ROSHAN DALVI, J.)