

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

WRIT PETITION NO. 2723 OF 2014

M/s. Preeti Dayakishan Sapru
Vs
Mr. Vishnu Undrya Thakre and
Ors.
.. Respondents

WITH

WRIT PETITION NO. 2724 OF 2014

M/s. Preeti Dayakishan Sapru
Vs
Mr. Madhukar Krushna Bhagat
and Ors.
.. Respondents

Mr. R.D.Soni i/b Ram & Co, Advocate for Petitioner in both petitions.

Ms. Namarta S. Bobade i/b M.J.Bhatt for Respondents no. 1 and 2 in W.P. No.2723/14 and R. No.1 to 5 and 7 to 12 in W.P.No.2724 of 2014.

Mr. Sunil V. Kale, Advocate for respondent no.3A and 3B in WP No.2723 of 2014 and R. No.11-A and B in W.P.2724/2014.

CORAM : R.G.KETKAR,J.
DATE : 22/02/2016

PC:

1. Heard Mr. R.D.Soni, learned counsel for the petitioner, Ms, Namarta Bobade, learned counsel for respondents no.1 and 2 in W.P.No.2723/2014 and respondents no.1 to 5 and 7 to 12 in Writ Petition No.2724 of 2014 and Mr Sunil Kale, learned counsel for respondent no.3A and 3B in Writ Petition No.2723 of 2014 and R. No.11-A and B in W.P.No.2724 of 2014 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and orders dated 1.1.2014 passed by learned Civil Judge, Senior Division, Link Court, Bhiwandi below Exhibit-98 in Special Civil Suit No.115 of 2008 and Exh.114 in Special Civil Suit No.116 of 2008. By these orders, the learned trial Judge rejected the applications made by the petitioner, hereinafter referred to as plaintiff', for amending the plaint.

3. The plaintiff has instituted suit for specific performance of agreement dated 20.2.2007 initially against defendants no. 1 and 2. The plaintiff has further claimed declaration that the agreement dated 15.11.2007 executed by and between defendants no. 1 and 2 is not binding on her and for perpetual injunction restraining defendants no. 1 and 2 from creating third party interest in Survey no.53/9 and Survey no.53/14 of village Ranjnoli, Taluka Bhiwandi, District-Thane (for short, 'suit property')

4. The plaintiff, thereafter, filed application Exh.63 on 20.8.2010 for amending the plaint by incorporating paragraphs 19(A) to 19(E) as also for impleading M/s Eco Homes Township Pvt Ltd as defendant no.3. That application was allowed. The plaintiff has now filed application Exh.98 in special Civil Suit No.115 of 2008 and Exh. 114 in special Civil Suit No.116 of 2008 for adding paragraphs 19(F) to 19(G) and prayer clauses to the

effect that newly added defendant no.3 has no right to carry out construction by showing access road through the suit property and for perpetual injunction restraining the newly added defendant-Eco Home Township Pvt Ltd from using the suit property as access road to the housing project. By the impugned orders, the learned trial Judge has rejected the applications. It is against these orders, the plaintiff has instituted the present petitions.

5. On behalf of M/s Eco Homes Township Pvt Ltd, Mr. Gaurav Monga, Director/Partner of respondent no.3 has made affidavits dated 27.8.2014. In paragraph 3 of the affidavits, it is stated that the suit property is not part of their project under development. Initially in written statement, through oversight the suit property was shown only in the initial application to Maharashtra Metropolitan Regional Development Authority (MMRDA) and subsequently both these survey numbers are deleted by executing registered document. All the commencement certificate and modified commencement certificate issued by MMRDA do not mention these lands at all. It is asserted that the suit property is nothing to do with their project either directly or indirectly and they have not shown the suit property as access to their entire project.

6. Mr. Kale further submits that in fact the rectification deed is executed whereby Survey no.53/9 and 53/14 which were wrongly

mentioned are corrected. He further reiterates the averments made in paragraphs 3 and 4 of the affidavits and further submits that M/s Eco Homes Township Pvt Ltd is not claiming any interest in the suit property or is not claiming any access road through the suit property. Statements made by Mr Kale, upon instructions from instructing Advocate Kadar Pasha, are accepted.

7. Mr. Soni submits that the plaintiff has filed rejoinder and in paragraph 6 it is contended that the suit property is part of the proposal of M/s Eco Homes Township Pvt Ltd.

8. As noted earlier, the learned trial Judge has rejected the applications, mainly on the ground that the proposed amendment of addition of prayer clauses against newly added defendant changes the nature of the suit as basically the suit is for specific performance and declaration that the agreement dated 15.11.2007 entered into by and between defendants no. 1 and 2 is not binding on the plaintiff and for perpetual injunction restraining the defendants no. 1 and 2 from creating third party interest in the suit property. By the proposed amendment, the plaintiff now claims relief against the newly added defendant no.3 to the effect that it has no right to carry out construction by showing access road through the suit property and for perpetual injunction restraining the newly added respondent no.3 from using the suit property as access road to the housing project. In view thereof, I do not find that the learned trial Judge has

committed any error in rejecting the applications for amendment, more so when M/s Eco Homes Township Pvt Ltd has made affidavit to the above effect. Hence, these petitions are dismissed. Liberty is reserved to the petitioner to adopt appropriate remedy against defendant no. 3, if so desired. Liberty is also reserved to the plaintiff to apply for disposal of the suits in time bound manner. If such application is made, the learned trial Judge will pass appropriate order. Order accordingly.

(R.G.KETKAR, J.)