

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER STAMP NO.5307 OF 2016
ALONG WITH
CIVIL APPLICATION STAMP NO.5308 OF 2016**

Hiral Homes : Appellant/Applicant.

Versus

Chitra Subhash Bhandari

**Daughter of late Smt.Manjubai Bhandari
and anr.**

: Respondents.

Mr. Vishal Kanade i/by ASD Associates for the Appellant/Applicant.

Mr. A S Singh for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 14th June 2016

P.C.

1 The above Appeal from Order takes exception to the order dated 20/01/2016 passed by the Trial Court i.e. the learned Judge of the City Civil Court, Dindoshi, Goregaon, Mumbai by which order the Notice of Motion filed by the Respondent No.1 came to be allowed in terms of prayer clause (b). The said prayer clause (b) reads thus :-

“that pending hearing and final disposal of this suit, that the Defendant No.1 be restrained by an order and temporarily injunction of this Hon'ble Court from creating any third party right, title and interest of any nature whatsoever in any manner in the suit property and/or any part or portion thereof.”

2 The Appellant herein is the original Defendant No.1 to the suit in question. The Respondent No.1 herein is the original Plaintiff and the

Respondent No.2 herein is the original Defendant No.2 to the suit in question. The suit property is 4 gunthas of land in CTS No.552 of village Kandivali, Taluka Borivali, Mumbai Suburban District. The Appellant lays a claim on the basis of the conveyance dated 17/01/2011 executed by the Respondent No.2 herein i.e. the Defendant No.2 to the suit in question. The suit property was belonging to the Bhandari family i.e. one Jeevan Bhandari and Motiram Bhandari. The Plaintiff is the grand-daughter of the said Jeevan Bhandari being the daughter of one Mangalubai who was the daughter of the said Jeevan Bhandari. The Plaintiff claims that she has share in the suit property. The Plaintiff has therefore filed the suit in question and amongst the reliefs sought is the challenge to the Irrevocable General Power of Attorney dated 20/10/1995 and General Power of Attorney dated 21/10/1995 allegedly executed by the members of the Bhandari family including the said Mangalubai in favour of the Respondent No.2. The Respondent No.2 as indicated above has in turn executed the conveyance deed in favour of the Appellant – original Defendant No.1 on 17/01/2011. It seems that the said Mangalubai Bhandari expired on 16/03/2003 and the Defendant No.2 i.e. the Respondent No.2 herein had conveyed the suit property to the Defendant No.1 i.e. the Appellant herein for a consideration of Rs.5,00,000/- in the year 2011 on the basis of the said power of attorney.

3 In so far as the Conveyance Deed is concerned, the Trial Court

observed that though the name of the mother of the Plaintiff is reflected in the Conveyance Deed, there is no document placed on record to indicate that the mother of the Plaintiff has received any consideration from the Defendants. The Trial Court was of the view that since the Plaintiff has challenged all documents on which reliance has been placed by the Defendant Nos. 1 and 2, therefore unless and until the suit is decided on merits, it is necessary to protect the legal right of the Plaintiff in the suit property and therefore allowed the Notice of Motion in terms of prayer clause (b).

4 It is also required to be noted that the Appellant herein, who is the Defendant No.1 to the suit in question, in the affidavit in reply filed to the said Notice of Motion has averred in paragraph No.9 that 175 sq.mtrs out of the total area of 312 sq.mtrs of the suit property has already been handed over to the MCGM as the same was falling under the D.P. Road and in so far as the balance 135 to 140 sq.mtrs is concerned, the same is unbuildable and no construction can be carried out thereon as the same is required to be surrendered to the MCGM. It is further averred in paragraph 10 of the said affidavit in reply that the portion of the suit property already merged with 27.45 sq.mtrs. D.P. Road which is being used by the public at large since long including the footpath constructed thereon. It is further averred in paragraph 10 that the balance portion of the suit property the road is constructed. It is lastly averred in paragraph 13 of the said affidavit in reply that the entire suit

property is falling under the D.P Road and is put to use and therefore nothing survives in the Notice of Motion. It is on the basis of the said averments that the Notice of Motion was sought to be opposed on behalf of the Defendant No.1 i.e. the Appellant herein. A reading of the said averments leads to a conclusion that no prejudice would be caused to the Defendant No.1, if injunction is granted.

5 In my view, having regard to the reasons mentioned by the Trial Court in the impugned order as also having regard to the aforesaid averments, the order passed by the Trial Court allowing the Notice of Motion in terms of prayer clause (b) does not merit any interference at the hands of this Court in its Appellate Jurisdiction. The above Appeal from Order is accordingly dismissed. In view of the dismissal of the above Appeal from Order, Civil Application No.5308 of 2016 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]