

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

**APPEAL FROM ORDER NO. 275 OF 2016
WITH
CIVIL APPLICATION NO. 355 OF 2016**

Shri. Arvind Mansukhlal Unadkat and ors. ... Appellants

vs.

Mrs. Kala Shantilal Shah and ors. ... Respondents

Mr. A. A. Kumbhakoni, Senior Advocate i/by Vaibhav Gaikwad,
Advocate for the appellants.

Mr. P. S. Dani, Senior Advocate i/by Sandesh Deshpande,
Advocate for respondents no.2 to 7.

Mr. G. S. Godbole, Senior Advocate i/by Bhavesh V. Mugum,
Advocate for respondents no.1 and 8.

Coram : Smt. R. P. SondurBaldota, J.

Date : 22nd March, 2016.

P. C. :

1. This appeal is preferred against the order dated 27th January, 2016, by which the trial Court rejected the appellants application for interim injunction to restrain the respondents from (i) making construction on the suit land, (ii) selling out the constructed units to third parties, (iii) creating any third party interest therein and/or (iv) interfering with their possession of the suit land.

2. As regards the interim relief of protection of their possession of suit property the statement at para 15 of the plaint is sufficient to refuse the same to the plaintiff. At para 15, the plaintiff alleges that about six days prior to the filing of the suit i.e. on 12th May, 2013, appellant no.1 learnt that respondent no.2 was to start construction activity by earth-filling of the suit land. Therefore, appellant no.1 went to the suit land and found that respondent no.2 had actually begun earth-filling and levelling the suit land. This would mean that as per the plaint itself the appellants are not in possession of the suit property.

3. The appellants have come to the court with an unusual and intriguing case. According to them, the brother of respondent no.1, who is not a party to the suit, her husband i.e. respondent no.8 and father of respondent no.8, who is again not a party to the suit had by registered sale-deed dated 16th October, 2002 sold the suit property to them. The document of the sale-deed shows that appellant no.1 had executed that sale-deed as the constituted attorney of the three vendors. Ten years thereafter, respondent no.1 allegedly forged and fabricated several documents to get back the suit property and later sold it to respondents' no.2 to 7. The reason therefor as stated in the plaint is that respondent no.1 did not approve the sale of the suit property by her brother, her

husband and her father-in-law to the appellants. Respondent no.1 allegedly fabricated three Powers of Attorney, one by appellants no.1 and 2 in favour of appellant no.1, the second by appellant no.1 to respondent no.8 and the third from respondent no.8 to herself. With the help of these Powers of Attorney, she sold the suit property first herself and later to respondent nos. 2 to 7 for a substantial consideration. The documents of sale-deed in her own favour is signed by her as the vendor as well as the purchaser. She has put the purchaser in possession of the suit property. Respondents no. 2 to 7 claim to have purchased the property by a registered deed of conveyance after taking due precautions of issuance of public notice, inspecting the revenue records and paying consideration to the vendors. The documents produced by them, prima facie support their claim as regards the precautions taken by them.

4. The trial Court in it's detailed order observed that the appellants had failed to show at the prima facie view of the matter that the Powers of Attorney are forged and fabricatd. Appellants while making serious allegations of forgery at a large scale have not even complained to the police. In the circumstances, genuineness of the documents would be a matter of evidence at the time of trial.

5. It is obvious from the pleadings that there are too many

questions unanswered, and several doubts raised. Further the unusual facts of case pleaded by the appellants, makes it difficult to believe their case on a prima facie view of the matter. Hence, the appeal is dismissed.

6. In view of dismissal of the Appeal from Order, the Civil Application does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]