

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

***APPEAL FROM ORDER NO. 217 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 292 OF 2016***

1. Shri Ramdas Arjun Madhavi
Residing at Madhavi House,
Ram Maruti Road, Naupada, Thane;
2. Shri Keshav Arjun Madhavi
(since deceased, through his legal heirs)
2/1. Shri Arvind Keshav Madhavi,
R/at Kasheli, Post : Kalher,
Tal. Bhiwandi, Dist. Thane.
2/2. Smt.Vinita Vijay Madhavi,
R/at fortuna-B, 5th floor,
Lodha Complex, Majiwada, Thane.
3. Smt.Krishnabai Vishwanath Vaity
(since deceased through legal heirs)
3/1. Shri Pradeep Vishwanath Vaity,
3/2. Shri Narendra Vishwanath Vaity,
both residing at – Vaity House,
Mahagiri, Koliwada, Thane.
4. Shri Eknath Arjun Madhavi,
R/at Yayati Co-op. Housing Society,
Baji Prabhu Deshpande Road,
Naupada, Thane.
5. Smt.Prabhavati Kamlakar Patil (deceased)
through Santosh Kamlakar Patil,
R/at Chandra Kutir, Netaji Subhash Road,
Mulund (W), Mumbai.

... Appellants/
(Ori. Plaintiffs)

v/s

1. Shri Anant Arjun Madhavi,
R/at Arjun Tower, 6th floor,
Naupada, Thane.

2. M/s. Fenkin Realtors,
Maratoraoji Bhavan, Dr.Moose Rd.,
Talao Pali, Thane.

... Respondents
(Ori.Def.Nos.1 & 2)

Mr.N.V.Walawalkar, senior advocate along with G.S.Godbole i/by
Manoj Bhatt for the appellants/applicants.

Mr.Shailesh Shah, senior advocate along with Piyush Shah for Resp.
No.1.

Mr.P.S. Dani, senior advocate along with R.M.Haridas, Anil Gala and
Neel Gala i/by Pawankumar Prasad for Resp. No.2.

Coram: N.M. Jamdar, J.

Dated: 13 July 2016

ORAL ORDER:

The Appellants challenge the judgment and order passed by the Civil Judge, Senior Division, Thane, dated 30 January 2016, rejecting the application filed by the Appellants under Order 39 Rule 102 of the Code of Civil Procedure, seeking an order of injunction against the Respondents.

2 The suit property is a land situated at Ram Maruti Road,

Naupada, Thane. The property is a open piece of land with a structure thereon known as Madhavi House. Parties are related. The Appellants and Respondent No.1 are brothers. The litigation in respect of the property stretches back to 1962. The father of the Appellants and Respondent No.1, Arjun Madhavi, purchased the property in the year 1962. Some time in the year 1970-1971, the proceedings taken by the Income Tax Department wherein the property was attached. In these proceedings Arjun Madhavi took a stand that the suit property belongs to Respondent No.1. The Income Tax proceedings were dropped. Similarly, again the income tax proceedings were taken up in the year 1987 when attachment was levied by the income tax department. Again stand was taken by Arjun Madhavi that the property belongs to Respondent No.1. In the year 1994, a suit was filed by one Mr.Savant for specific performance of an agreement dated 31 July 1995 against the by Respondent No.1 and the Plaintiff with him. The suit was disposed of holding that said Mr.Savant is not entitled to specific performance but for return of the earnest amount. In this proceedings a finding came to be recorded that the Respondent No.1 is the owner of the suit property. The first appeal was filed by Mr.Savant in the year 2011. This appeal was disposed of as the matter was settled between Mr.Savant and Respondent No.1. After the first appeal was so disposed of, the Respondent No.1 executed a deed of conveyance on 11 October 2013 in favour of Respondent No.2. In the meanwhile, the Appellants filed a Special Civil Suit No.249 of 2010 for partition of the property.

The suit bearing No.249 of 2010 was decreed and the partition of the property was directed to be effected on 13 March 2000. Respondent No.1 filed first appeal in this Court on 8 May 2015 which is pending. Thereafter, the Appellant filed a suit bearing No.648 of 2014 seeking an order of injunction. The suit was withdrawn on 2 January 2016 by the Appellant. Before withdrawal of the suit, the present suit was filed by the Appellants on 11 December 2015. In this suit, the application for temporary injunction was taken out which has been dismissed by the impugned order dated 30 January 2016.

3 Before the learned Civil Judge, the Appellants contended that the right of the Appellants in the joint family property including the suit property has been confirmed by the judgment and decree passed in the Special Civil Suit No.249 of 2010 filed for partition. It was contended that, inspite of the conveyance pending of the partition suit, Respondent No.1 sold the property to Respondent No.2 and if the Respondent No.2 carries on construction in the suit property, then irreparable loss will be caused and the rights of the Appellants will be defeated. In this application, Respondent Nos.1 and 2 appeared and contested the application. They contended that, in the earlier suit, from which no proceedings were taken further, it has been held that Respondent No.1 is the sole owner of the property. It was contended that the Appellants have approached the Court at a belated stage and Respondent No.2 has already spent a substantial sum of almost 10 crores and constructed the ground floor, first floor

as well as some portion of the second floor. The learned Civil Judge took note of the history of litigation in respect of the suit property and the findings rendered in the earlier proceedings. The learned Civil Judge took note of the earlier orders passed by this Court wherein the Appellants have sought permission to erect some temporary structure in the suit property and concluded that the Appellants are not in actual possession of the entire property. The learned Civil Judge also considered the conduct of the Appellants in approaching the Court late for seeking an injunction and that the earlier suit for injunction wherein the conveyance was not challenged, was withdrawn. Learned Civil Judge concluded that the Appellants failed to establish *prima facie* case and balance of convenience was not in favour of the Appellants. Accordingly, by the impugned order the learned Judge dismissed the application for interim relief.

4 I have heard Mr.Walawalkar, learned senior advocate for the Appellants, Mr.Shah, learned senior advocate for Respondent No.1 and Mr.Dani, learned senior advocate for Respondent No.2.

5 Appeal taken up for disposal by consent of the parties.

6 Mr.Walawalkar, learned senior advocate for the Appellants submitted: By decreeing the partition suit, the share of the Appellants in the suit property is confirmed and, therefore, there cannot be any doubt about the right of the Appellants to the suit

property. Merely because the first appeal is filed, the finding that the suit property is joint family property and the Appellants have share in it, is still operating. The findings in the proceedings taken to lift the attachment of income tax department as well as the findings rendered in the proceedings instituted by Mr.Savant have lost its efficacy as the partition suit filed by the Appellants individual is decreed in favour of the Appellants. The learned Civil Judge, while decreeing the partition suit, has taken note of the earlier proceedings which have nobearing now. *Prima facie* case in favour of the Appellants, as the right of the Appellants, is more than established. The conduct of Respondent No.2 in entering into conveyance with full knowledge of the pending proceedings will not make him a bonafide purchaser and the position of law relied upon by the learned Civil Judge protecting the action of bonafide purchaser will not apply to Respondent No.2. In the conveyance deed, an indemnity clause is provided wherein the Respondent No.2 can always proceed against Respondent No.1 and claim monetary damages and, therefore, even if the injunction is granted, Respondent No.2 can always take appropriate action against Respondent No.1. Though the suit for injunction was filed without challenging the conveyance, specific liberty was sought in the plaint itself to challenge the conveyance deed and, therefore, not challenging the conveyance deed in the earlier suit is not fatal. After the suit was withdrawn, some time was taken in collecting the papers and immediately the present suit was filed and, therefore, there is no delay. The construction has not come up substantially and it has

come only up-to the first floor. Considering the fact of pendency of the first appeal and the Respondent No.2 has entered into a transaction with open eyes, unless an order of injunction is granted, the entire property will be constructed, F.S.I. will be consumed and nothing will be left for adjudication in the present suit as well as in the first appeal. The following cases are relevant for adjudication of the present appeal: *Kirpal Kaur v/s Jitender Pal Singh*, reported in 2015(9) SCC 356; *T.G. Ashok Kumar v/s Govindammal*, reported in 2010 (14) SCC 370; and *Hardeo Rai v/s Sakuntala Devi*, reported in 2008 (7) SCC 46.

7 In reply, Mr.Shah, learned senior advocate for Respondent No.1 submitted: Even though the decree for partition has been passed, it is not final as it is under challenge in the first appeal. Even though the decisions in the earlier suits have been referred to in the judgment in the partition suit, this point is open to be urged in the first appeal and it has to be kept in mind that in the three suits, two in respect of income tax proceedings and one instituted by Mr.Savant, finding has been rendered that the property belongs to Respondent No.1. Father of the Respondent No.1, Arjun Madhavi, was the party wherein he made a statement that the property belongs to Respondent No.1. The observations made in these proceedings cannot be kept aside. The Appellants had full knowledge of the conveyance and if the Appellants wanted to seek equitable relief, he ought to have joined Respondent No.2 as a party in the suit and it cannot be contended

that it is Respondent No.2 who must join himself as a party Respondent. On their own showing the Appellants came to know of the conveyance in October 2013, yet filed the first suit for injunction on 19 June 2014. The construction was started some time around November 2014 and the decree in partition suit was granted on 13 March 2015 and thereafter on 11 December 2015 almost a year from the start of construction, present suit was filed. The Appellants stays in the very premises where construction is going on and, therefore, this conduct is nothing but of complete laches.

8 Mr.Dani, learned senior advocate for Respondent No.2 submitted : The findings in the proceedings instituted by Mr.Savant are relevant. When the conveyance was entered into, the findings in the proceedings filed by Mr.Savant had become final, so also the findings in the proceedings challenging the income tax proceedings. Based on these findings, to which there was no challenge by Respondent No.1, Respondent No.2 entered into the conveyance and, therefore, it cannot be said that the Respondent No.2 is not a bonafide purchaser. For almost a year construction is going on before the present suit for injunction was filed. The commencement certificate was granted in September 2014 and completion certificate for part of the property, was granted in September 2015. The Appellants are in possession of only Madhavi House and not the entire property. The partition suit is in respect of seven properties including the present and the Appellants only have 5/11 share in all

these properties and even if the present property is constructed upon, the shares can always be adjusted in the partition suit. Respondent No.2 is ready to keep aside part of the property and will not construct the same till the disposal of the suit and will not dispossess the Appellants from the premises – Madhavi House, without due process of law. He submitted that, even the F.S.I. can be computed in terms of money.

9 Both Mr.Dani and Mr.Shah relied upon the following decisions, which were cited before the learned Civil Judge : *Mandali Ranganna & ors. v/s T. Ramchandra & ors., reported in 2008(4) All MR. 932 (S.C.); ECE Industries Ltd. Ltd. (2) v/s S.P.Real Estate Developers P. Ltd. & anr., reported in (2009) 12 SCC 776; Ganpatbhai Mahijibhai Solanki v/s State of Gujarat & ors., reported in 2008 ALL SCR 2583; S.P.Changalvaraya Naidu (Dead) by Lrs v/s Jagannath (Dead) by Lrs & ors., reported in (1994) 1 SCC 1; and Shri Cutchi Visa Oswal Derawasi Jain Pathshala v/s Shri Cutchi Visha Oswal Derawasi Jain Mahajan & anr., reported in 2005 (1) ALL MR 484.*

10 Learned counsel for the parties have sought to urge various legal provisions and on the merits of their rival contentions in the suit. Keeping mind that the scope of the appeal and that it is not to be conducted like a mini trial, I have referred to the decisions which are relevant for consideration at hand. The main issue is how to balance the equities between the parties pending disposal of the suit.

11 The appeal from order is an appeal from exercise of discretion by the Trial Court. As laid down in the Apex Court in the case of *Wander Ltd. v/s Antox India (P) Ltd.*¹, the scope of an appeal from order from a discretionary order passed by the Trial Court, is limited to ascertain whether the exercise of discretion by the Trial Court is perverse or otherwise. Four facets will arise for consideration. Firstly, the *prima facie* case, balance of convenience, irreparable injury and conduct of parties.

12 As regard the *prima facie* case, heavy reliance is placed by Mr. Walawalkar, on the decree for partition passed in favour of the Appellants. Suit No.249 of 2010 was instituted by the Appellants on 23 March 2010. In the suit, it is stated that, father Arjun was a Karta of Hindu Joint Family. The details of the property have been mentioned in the partition suit. Arjun expired on 21 May 1986. The suit properties are listed in Schedule-A annexed to the plaint. Four properties are situated in same locality i.e. Naupada, Thane. One property is situated Kolshet and other properties at Station Road, Thane. While decreeing the suit, the learned Civil Judge concluded that the suit properties are joint family properties. It was the contention of the Respondent No.1 and the other Respondents that, all the parties were staying separately and they were having independent avocation. It was their case that all the properties are their self-acquired properties. After the partition suit was decreed,

1. 1991 (11) PTC 1 (SC)

First Appeal bearing No.1453 of 2015 is filed and is pending in this Court for consideration. Mr.Walawalkar relied upon the decision in the case of *Hardeo Rai v/s Sakuntala Devi & ors.*², to contend that once it is declared that the suit property is joint family property, then the property could not have been disposed of by Respondent No.1 in favour of Respondent No.2. He contended that the only right that Respondent No.2 purchaser has, is to institute the suit for partition but he could not be placed in possession of the suit property. As the proposition of law, the argument advanced by Mr. Walawalkar cannot be disputed. But the question is of interim arrangement pending the present suit. The suit for partition has been decreed, the Respondents are in first appeal. Section 91 of the Code of Civil Procedure provides a right of appeal which the Respondents have exercised. In that sense, therefore, it has not been conclusively established that the suit property is of the joint family and Respondent No.1 has no independent right whatsoever. The learned Civil Judge, though has referred to the earlier proceedings while granting decree of possession, the said ground has been agitated by the Respondents in the pending first appeal. The earlier proceedings filed in respect of income tax authorities has been placed on record, so also the proceedings instituted by Mr.Savant. R.C. Suit No.829 of 1979 was filed challenging the attachment of the suit property. The suit was decreed. An appeal was filed by the Income Tax Department, which was dismissed holding that Respondent No.1 was the owner of the

2 (2008) 7 SCC 46

property. It is contended by Mr.Walawalkar that the Appellants were not party to this proceedings and, therefore, the findings are not binding on the Appellants. It has been pointed out by Mr.Dani, senior advocate and Mr.Shah that, though the Appellant was not party in this proceedings, father Arjun had given a categorical statement that the suit property belongs to Respondent No.1. On 31 August 1995, Respondent No.1 entered into an agreement with one Mr.Savant. Thereafter the suit was filed by Mr.Savant being Special Civil Suit No.479 of 2004. The Appellant was also made party in the suit. While disposing of the suit filed by Mr.Savant, wherein both the appellants and Respondent No.1 and other brothers were party, a finding came to be recorded by the learned Civil Judge that it is Respondent No.1 who is the owner of the suit property. The suit was however disposed of by the learned Civil Judge by judgment and order dated 17 August 2011 granting alternate relief of refund of part-consideration and rejecting relief of specific performance. In the plaint filed by Mr.Savant, he categorically asserted that it is Respondent No.1 who is the owner of the suit property. It was also stated that Respondent No.1 represented to him that he is the owner of the suit property and no other person has any right. During the trial of the suit, therefore, the Appellants had full knowledge of the claim asserted by the Appellants in the civil suit. Thereafter, when the first appeal was filed by Respondent No.1, the Appellants had an opportunity to contest the findings against him regarding ownership which the Appellants did not do so. In the appeal filed by the Income

Tax Department, the learned District Judge had held that Respondent No.1 has constructed a building and tenants were inducted, and his name finds place in municipal record and all these circumstances showed the ownership over the suit property. It is not possible to believe that the Appellants would not be aware of these proceedings filed by in the Civil Court and also the Income Tax proceedings wherein father Arjun had made a statement that Respondent No.1 is the owner. Therefore, the earlier suits in respect of Income Tax proceedings in which father of the Appellants had made a statement regarding ownership of Respondent No.1 and the findings in the suit filed by Mr.Savant were holding the field when the first appeal filed by Mr.Savant was disposed of having been settled between the parties. What is the validity of this defence taken by Respondent No.1, will be considered in the first appeal. This defence is only highlighted to stress that, it can no means be said that the position as to whether the suit property is a joint family property or a ownership of Respondent No.1, is conclusively settled and that Respondent No.1 has no case at all in the first appeal. Therefore, at present, though the suit for partition is decreed in favour of the Appellants, it cannot be said that the Respondent No.1 has no independent right left at all and his claim for independent right has no merit. The nature of defence put-forth by Respondent No.1 in the first appeal can be considered while arriving at an interim arrangement in the present suit.

13 The second question that arises is of balance of convenience. Mr.Dani, senior advocate relied upon the decision in the case of *ECE Industries Ltd.(2) v/s S.P.Real Estate Developers Pvt. Ltd. & anr.*³, to contend that, when huge investment has been made and substantial construction has already been carried out, at such stage, if injunction is granted, it will cause irreparable damage to Respondent No.2. Mr.Walawalkar, on the other hand, submitted relying on the decision in case of *T.G.Ashok Kumar v/s Govindammal & anr.*⁴ that the protection to a bonafide purchaser's right and title are saved, it will only apply to a bonafide purchaser. He contended that, in the present case, Respondent No.2 had full knowledge of the partition suit filed as there is a specific averment in the conveyance itself. According to him, therefore, Respondent No.2 is not a bonafide purchaser. He also submitted relying on the decision in the case of *Kirpal Kaur v/s Jitender Pal Singh & ors.*⁵ that the Respondent No.2 when having knowledge of the partition suit, ought to have joined itself in the suit which the Respondent No.2 did not do. Mr.Shah countered this submission by contending that it is the Appellants who should have joined Respondent No.2 in the partition suit and sought relief. The matter is at this interlocutory stage. It is not necessary to have long drawn debate as to whose duty in law to join a party in the suit. It is the Appellants who are seeking an equitable order to restrain Respondent No.2 from carrying out any further construction. It should have been the anxiety of the Appellants that the property

3 (2009) 12 SCC 776

4 (2010) 14 SCC 370

5 (2015) 9 SCC 356

should not be constructed upon and lost. Any prudent party harbouring such anxiety would immediately take steps to join such purchaser as a party Respondent in the suit and immediately seek relief against such party. As rightly contended by Mr.Shah, this is a general practice followed by a Plaintiff who comes to know of any third party rights and is apprehensive that the property would be lost.

14 It is has to be noted that, even though the suit for partition was filed, there was no interim order restraining Respondent No.1 from disposing of the property. It is after the first appeal arising from the proceedings instituted by Mr.Savant was disposed of by filing consent terms that the Respondent No.1 executed conveyance in favour of Respondent No.2. At that stage, the position was that the suit filed by Mr.Savant was disposed of finding that Respondent No.1 is the owner. In the suit filed in respect of income tax proceedings, a finding was recorded that Respondent No.1 is the owner of the suit property. The statement was given by father Arjun that Respondent No.1 is the owner of the suit property. Therefore, at the time when Respondent No.1 executed the conveyance in respect of Respondent No.2, there was no judicial finding that the property is a joint family property. In fact, all judicial proceedings were concluded with a finding that Respondent No.1 is the owner of the suit property. Pursuant to that position, the conveyance was executed between Respondent Nos.1 and 2. Therefore, the contention advanced by Mr. Walawalkar that Respondent No.2 is not a bonafide purchaser, cannot be accepted at

this stage. This is not a case where no proceedings were taken in respect of suit properties earlier and the suit for partition is the first judicial proceedings. In fact, even though findings were recorded against the Appellants in the earlier rounds, no attempt was made to challenge the same by filing cross-objections.

15 The next ground for consideration is the conduct of the Appellants and the delay on their part. The first and the foremost aspect is that the Appellants live in part of the very suit property where the construction is carried out. The Appellants occupy the structure in the suit property known as Madhavi House. The Appellants in the plaint has admitted that it was in October 2014 that the Appellants came to know of the conveyance. In the conveyance it is clearly stated that the suit property would be developed by Respondent No.2. Having once come to know that the property, part of which the Appellants are occupying, would be put for development, and to which the Appellants claim certain rights, immediate action would have been to seek injunctive relief by any reasonable period. As stated earlier, no injunctive relief was sought in the partition suit. It is stated that, on 14 October 2013, the Appellants came to know of the conveyance. It is on 19 June 2014 that the Appellants filed the suit seeking injunction. Therefore, after having come to know about the conveyance nine months thereafter, a simplicitor suit for injunction was filed without raising any challenge to the conveyance deed. The construction started some time in

November 2014. The suit for injunction was disposed of. The partition suit was decreed on 13 March 2015. On 15 June 2015 the first appeal was filed and it is on 11 December 2015 that the Appellants filed the present suit.

16 Therefore, from 18 November 2014 to 11 December 2015, for more than one year, the Appellants took no steps to seek any injunction. While on the site the construction was going on. Respondent No.2 excavated the land, laid foundation, constructed a basement, laid the plinth, erected the first floor, thereafter erected the second floor. All this while Appellants simply kept watching the construction coming up just few meters from them. Such conduct cannot be expected from the party who now seeks to injunct the Respondent No.2 who has invested, as stated by Respondent No.2, almost ten crores of rupees in the suit property. A party seeking injunctory relief cannot simply walk in at any time it chooses. Respondent No.2 who entered into a conveyance when there were findings in favour of Respondent No.1, there was no restrain order in the suit from transferring the property, is carrying on construction. The argument advanced by Mr.Walawalkar that in the first suit liberty was sought to challenge the sale deed subsequently and took some time to gather the papers and, therefore, the present suit was filed with some delay, cannot be accepted. Whatever may be the justification, such delay and leisurely approach cannot be taken when a equitable relief of injunction is sought against the other party which

has invested substantial amount in the property.

17 The first appeal filed by the Appellants pending in this Court, the decree for partition has not yet become final. It cannot be said that on the basis of this the Respondent No.1 has no chance of success in the first appeal. Therefore, even assuming *prima facie* case of right in the suit property is made out by the Appellants, the questions still remain of balance of convenience and balancing of equities in the matter. The Appellants have not shown such urgency while seeking an injunction to restrain the Respondent No.2 from carrying out construction. It is impossible to believe that the Appellants were not aware of the conveyance or the construction activity. In the proceedings taken by Mr.Savant, the conveyance was referred to. There is absolutely no cogent explanation for almost one year and permitting the Respondent No.2 to reach up-to second floor before moving to seek an order of injunction. The findings in the earlier proceedings, which were not agitated in the first appeal, cannot be lost sight of.

18 The question now is, what would be the equitable arrangement pending the suit. The first appeal is pending with the decree of possession and partition in favour of the Appellants. At the same time, the Appellants have not been diligent in asserting his right and substantial construction as come up.

19 I am of the opinion that the equities can be balanced in the following manner. If the schedule to the plaint of the partition suit is perused, it mentions six properties inclusive of the present property. Four properties are situated in the same area. The Appellants have claimed 5/11 share in the suit properties. Therefore, apart from the suit property, there are other properties available to the joint family. Mr.Walawalkar contended that all other properties are incumbered and one of the properties have been developed by Respondent No.1. But, these properties are subject matter of the partition. Therefore, even if the first appeal is dismissed and partition decree is confirmed, it is not that all the properties would come to share of the Appellants. It is informed that, total area of the properties admeasure about 7000 sq.mtrs. Therefore, even if 5/11 share is kept aside is to be adjusted, it can be fully adjusted with the other properties. As regard the contention of Mr.Walawalkar that F.S.I. of the present properties will be consumed or lost, Mr.Shah has rightly pointed out that, even the F.S.I. and T.D.R. can always be compensated in terms of money and the shares can be adjusted in the partition decree. Respondent No.2 has tendered on record a statement which is taken on record and marked 'X' for identification, wherein it is stated that the total area of the suit plot is 995 sq.mtrs., total constructible area 1641.75 sq.mtrs and 5/11 share will be (45%) 448 sq.mtrs. of FSI and 292 sq.mtrs. of TDR and Respondent No.2 is constructing only 837 sq.mtrs and, therefore, balance of 804.25 sq.mtrs remain. Learned counsel for Respondent No.2 has also made a statement that the Appellants will

not be dispossessed from the premises, Madhavi House, without following due process of law.

20 Considering the calculations which are placed on record by the learned counsel for the Respondents, I am of the opinion that the equitable arrangement pending the suit can be, to direct Respondent No.2 to keep aside buildable area of 804.25 sq.mtrs. from the suit property till the disposal of the suit and not dispossess the Appellants from the property, Madhavi House, without following the due process of law. As stated earlier, the share of the family members can be adjusted in the first appeal which is pending in this Court.

21 Accordingly, the appeal from order is disposed of by directing Respondent No.2 to keep aside 804.25 sq.mtrs of buildable area in the suit property and the Respondents will not take any steps to dispossess the Appellants from the premises, Madhavi House, without taking recourse to due process of law.

22 In view of disposal of the appeal, the civil application also stands disposed of.

23 All the observations made in the above order are *prima facie* and all contentions of the parties are kept open.

24 It will be open to the parties to make request to the learned

Civil Judge for expeditious disposal of the civil suit.

25 Since the learned senior advocate for the Appellants seeks continuation of the statement made by the Respondents for a period of six weeks. Considering the facts and circumstances, the possession envisaged under the statement made by learned counsel for Respondent No.2 will continue for a period of six weeks from today.

(N. M. Jamdar, J.)