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

CIVIL APPLICATION NO. 624 OF 2012

IN

SECOND APPEAL NO. 325 OF 2012

M/s. Ashtavinayak Developers & Ors. ... Applicants/Appellants

V/s.

Mr. Krishna Ananta Patil & Ors. ... Respondents.

Mr. Mandar Limaye for the Applicants/Appellants.

Mr. S.V. Palsuledesai for Respondents 1 to 4.

Mr. Rajiv Deokar i/b. Jayesh Deokar for Respondent 5.

Mr. Sagar Joshi i/b. M.S. Lagu for Respondents 6 to 10, 12 to 14.

CORAM : N.M. Jamdar, J.

12 July, 2016.

P.C. :-

By order passed today the Second Appeal is admitted on the question as to whether the First Appellate Court in the absence of a specific prayer to grant decree of declaration in respect of 2/5th share in the suit property to the Respondents – Plaintiffs. However, the question is whether during the pendency of the Second Appeal there should be any grant of stay to the injunction granted by the First Appellate Court.

2. It is an admitted position that the Suit property is an ancestral property. Relations between the parties is also admitted. The Respondents – Plaintiffs are heirs who had claimed rights in the suit property through the branch of daughters and while the property is sought to be sold in favour of the Appellants - developer by the branch representing the brothers. The First Appellate Court has recognized that the Respondents – Plaintiffs have $2/5^{\text{th}}$ share in the suit property. Even though there is no specific prayer and the question whether specific declaration could be in the absence of prayer is to be considered that will not take away the admitted position that the Respondents – Plaintiffs have $2/5^{\text{th}}$ share in the suit property.

3. The Applicant – developer without making necessary enquiry, which any prudent developer would do and without issuing a public notice, which even an ordinary person would give, has entered into the transaction with the branch representing the brothers. Therefore, on the face of it, rights of the branch representing the daughters i.e. the Respondents – Plaintiffs have been deprived of their entitlement.

4. The Appeal is pending since the year 2012 and it adjourned on various occasions on the ground of settlement. The only offer made by the Appellants is that the Appellants will keep

aside the share as per the agreement and inspite of repeated queries, the Appellants had refused to keep aside any part of the property to secure the share of the Respondents – Plaintiffs.

5. In the circumstances, the injunction which is granted by the First Appellate Court against the Appellants cannot be stayed during the pendency of the Second Appeal. No case is made out for stay of injunction and to permit the Appellants to develop the Suit property and dispose of the same whereby completely side stepping the rights of the Respondents – Plaintiffs.

6. In the circumstances, relief prayed for in the Civil Application viz. the stay of implementation of execution of judgment and decree, which would in turn amount to stay to the order of injunction, cannot be granted. The Civil Application is accordingly rejected.

(N.M. Jamdar, J.)