

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 736 OF 2015

ALONGWITH
CIVIL APPLICATION NO. 895 OF 2015
IN
APPEAL FROM ORDER NO. 736 OF 2015

Sai Spececon India Pvt. Ltd and Ors.

.....Appellants

V/s.

Balaji Reality & Ors.

.....Respondents

* * * * *

Mr. G.S. Godbole i/by. Mr. Drupad S. Patil, Advocate for the appellants.

Mr. S.M. Gorwadkar, Senior Counsel i/by. Mr. Hemant Ghadigaonkar,
Advocate for the respondents.

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

7th March, 2016.

P.C. :-

1). This appeal arises out of the order dated 30th April, 2015 by which the trial Court allowed the application of respondent no.1 plaintiff for interim reliefs and to restrain the appellants from disturbing possession of respondent no.1 of the suit property without due process of

law and to restrain the appellants from creating any third party rights over the suit property. The objection, in essence, of the appellants to the impugned order, is to the injunction as regards the possession of the suit property.

2). Respondents no.2 to 5 and 7 to 9 are the original owners of the suit property. They had entered into an agreement for development dated 14th June, 2007 and also executed power of attorney in favour of partnership firm by name, Sai Erectors, which subsequently has been converted into a private limited company. Sai Erectors had paid a substantial amount of Rs.1 crore to respondents no.2 to 9. It appears that, later disputes developed between the parties and respondents no.2 to 9, by issuing a public notice dated 19th July, 2014 terminated the development agreement, as well as, power of attorney in favour of the appellants. The public notice was responded to by the appellants by its reply dated 10th September, 2014. Thereafter, on 29th December, 2014 the appellants, by making use of the very power of attorney executed sale-deed in its own favour.

3). Upon cancellation of the development agreement and power of attorney, respondents no.2 to 9 executed registered sale-deed in favour of respondent no.1 on 9th January, 2015 and delivered possession of the suit property to it. Thereafter, respondent no.1 filed the suit

herein in the trial Court for declaration that it is the lawful owner of the suit property and that the sale-deed in favour of the appellants is illegal, null and void. Respondent no.1 also sought permanent injunction to restrain the appellants from disturbing it's possession of the suit property and from creating any third party rights over the same.

4). The appellants do not claim any overt act of possession over the suit property. The claim of possession of the appellants is solely based upon the statements in the documents of development agreement and the power of attorney which stand terminated. As against this, respondent no.1 contends to be in possession of the suit property on the basis of registered sale-deed executed by the owners in its favour. Therefore, on a *prima-facie*, view of the matter the claim of possession of respondent no.1 will have to be accepted. Mr. Godbole, the learned Advocate appearing for the appellants submits that, once it is stated in the development agreement, as well as, the power of attorney that the possession of the suit property had been handed over, it was necessary for respondent no.1 to establish that the appellants had lost that possession or the appellants had been dispossessed by any of the respondents. I find no substance in the argument since the claim of possession of the appellants is wholly based on a statement in a written document. The appellants have neither pleaded nor established any

overt act of possession over the suit property. On a *prima-facie* view of the matter, there is no infirmity whatsoever in the impugned order. Hence, the Appeal from Order is dismissed.

5). In view of dismissal of the Appeal from Order, Civil Application No.895 of 2015 does not survive. The same is accordingly disposed off.

6). Mr. Godbole, requests for continuation of the ad-interim order. The request is rejected.

(SMT. R.P. SONDURBALDOTA, J)