

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 811 OF 2014

with

Civil Application No.973 of 2014

Hazal Louis Gonsalves And Ors ...Appellant

Versus

Impact Construction Company And Ors ...Respondents

WITH

Appeal from Order NO. 554 OF 2016

with

Civil Application No.711 of 2016

Hazal Louis Gonsalves And Ors ...Appellant

Versus

Impact Construction Company Thr.its Partner
Akbar Hazi Suleman Jagrala And Ors ...Respondents

Mr.J.G.Damani, for the Appellants.

Mrs.Madhuri More, for the Respondent-BMC in AO 811/14.

Mr.Suresh Dubey i/b. Mr.Ashish Dubey, for Respondent No.1 in both the matters.

CORAM : G.S.KULKARNI, J.

DATE : 29th NOVEMBER, 2016.

P.C. :

1. After these appeals are heard for some time, the learned Counsel for the parties fairly states that considering the impugned orders as passed by the learned Trial Judge in Notice of Motion No.566 of 2014 and Notice of Motion No.1560 of 2013, it would be appropriate that the parties are heard afresh on these Notices of Motion. Learned Counsel for the parties would be justified in their submission. The appellants have asserted their rights in respect of the suit property namely CTS No.359 and 360 situated at village Malwani, Malwani suburban district. The contention of the Appellants is that the Deed of Conveyance on which the contesting Respondent No.1 (Impact Construction Company) is relying, do not confer any right, title and interest on Respondent No.1. This is being asserted on the basis of the basic conveyance dated 25 October 1954. It is submitted that in the teeth of this document by which the rights in respect of the land were transferred to the grand-father of the Appellant, the conveyance dated 14 November 2011 which is being relied upon by Respondent No.1, could not have been executed. The claim of the

Appellants is contested by Respondent No.1 to contend that the assertion of the Appellant is incorrect.

2. Be that as it may both the parties have relied on the substantial documents to assert their legal rights in respect of the suit land. Even for the purpose of prayers for injunction and other interim prayers which are made on behalf of the Appellants/Plaintiffs, the learned Trial Court ought to have considered the various documents which are relied upon by the parties to support their respective assertions qua their rights on the suit property. Perusal of the impugned order does not reflect that this material is considered. It would be therefore, appropriate that an opportunity be granted to the parties to appear before the Trial Court in Notice of Motion No.566 of 2014 and Notice of Motion No.1560 of 2013 so that the learned Trial Judge can consider the rival claims of the parties and pass appropriate orders in accordance with law, by considering the material which is placed on record for deciding the prayers for injunction and other necessary interim prayers. The impugned orders dated 21 May 2014 and 5 May 2016 are accordingly set aside by consent of the parties.

3. As regards the interim arrangement till the said Notice of

Motions are disposed of, the learned Counsel for Respondent No.1 fairly states that in regard to C.T.S.No.359 Respondent No.1 has not undertaken any construction and that till the said Notices of Motion's are heard and decided, Respondent No.1 would maintain status quo in respect of CTS No.359. As regards CTS no.360, the learned Counsel for Respondent No.1 states that already construction is completed and an occupation certificate dated 16 January 2014 has already been issued by the Municipal Corporation. However, considering the facts and circumstances of the case, it would be appropriate that till the Notices of Motion are decided, Respondent No.1 shall not create any further third party rights in respect of any construction which have been undertaken on the suit property CTS No.360.

4. The Appeals are accordingly disposed of in the above terms. The learned trial Judge is requested to take up the hearing of Notice of Motion No.566 of 2014 and Notice of Motion No.1560 of 2013 as expeditiously as possible and decide the same within a period of six weeks from today. Parties agree that the pleadings are complete in both the Notices of Motion and they would like to proceed with the hearing on these Notices of Motion.

5. The learned Trial Judge may also consider the request of the parties to submit additional documents as the parties may urge. The parties agree that they will co-operate for expeditious hearing of the Notices of Motion. All contentions of the parties on merits of the matter are expressly kept open.

6. The appeals are accordingly disposed of. No costs.

[G.S.KULKARNI, J.]