

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.655 OF 2016

M/s. B. K. Construction through its Partners
Navaz Faiz Khan and another ... Applicants
Vs.
Jagdish Sukhramani and others ... Respondents

Mr. T. D. Deshmukh i/b. Mr. Samrat K. Shinde for Applicants.
Mr. Pankaj Purway for Respondents.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 29, 2016

P.C. :

Heard Mr. Deshmukh, learned Counsel for applicants and
Mr. Purway, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants', have challenged the judgment and order dated 24.08.2016 passed by the learned 3rd Joint Civil Judge, Junior Division, Pune below exhibit-32 in R.C.S.No.175 of 2016. By that order, the learned trial Judge rejected the application made by the defendants for rejection of plaint under Order VII, Rules 11(a) and (d) of C.P.C.

3. In support of this Application, Mr. Deshmukh strenuously contended that plaintiffs have not impleaded the original owner in the present Suit. Plaintiffs claim that they have entered into development agreement with the original owner. The original owner is Mr. Ashok Nathumal Utamchandani. Plaintiffs claim that Uttamchandani has also executed Power of Attorney in favour of plaintiffs. He submitted that unless and until Uttamchandani is impleaded as a plaintiff, present plaintiffs cannot maintain the Suit. He has taken me through paragraphs

2 and 3 of the plaint as also cause title of the plaint.

4. Mr. Deshmukh further submitted that the plaint is also liable to be rejected for not giving description of the property sufficient to identify it. He relied upon Order VII, Rule 3 of C.P.C. and submitted that even on this ground, plaint is liable to be rejected. On the other hand, Mr. Purway supported the impugned order.

5. While rejecting the application, the learned trial Judge has observed in paragraph 8 thus,

“8. Admittedly, the plaintiffs have filed this suit claiming their right, title and interest in the suit property on the basis of development agreements executed in their favour by the original owners. Therefore, there is no need for them to implead the original owners as party to this suit and they have the locus standi to file this suit in respect of the suit property.”

6. Perusal of paragraphs 2 and 3 of the plaint shows that plaintiffs have asserted that they have acquired development rights on the basis of registered development agreement as also power of attorney both dated 13.08.2007 from Ashok N. Uttamchandani. They further assert that they have obtained possession of the suit property for developing the same and that defendants are trying to encroach upon the property. Plaintiffs therefore, instituted Suit for perpetual injunction restraining the defendants from encroaching upon the suit property as also for mandatory injunction to remove the board and demolish the compound wall erected towards North West side of the suit property.

7. For the reasons recorded in paragraph 8 of the impugned order, I do not find any merit in the submission of Mr. Deshmukh that plaintiffs ought to implead Uttamchandani as one of the plaintiffs. It is settled position in law that while considering application under Order VII, Rule 11, only the averments made in the plaint are required to be considered

and the plaint cannot be rejected on the basis of the defence set up in the written statement.

8. As far as the objection relating to description of the property under Order VII, Rule 3 of C.P.C. is concerned, the learned trial Judge has issued direction to the plaintiffs to comply the provisions of Order VII, Rule 3 of C.P.C. as per the observations made in the impugned order. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application of the defendants. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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