

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

WRIT PETITION NO.10996 OF 2015

Smt. Chandrabai Ambernath

Mhatre & Ors.

...Petitioners

vs.

Shri Pralhad Janardhan Thakur & Ors.

...Respondents

Mr. G. S. Godbole i/b Mr.Parag M. Tilak a/w Ms. Shruti Tulpule for
the petitioners.

CORAM : K. K. TATED, J.

DATE : JULY 27, 2016.

P.C.

. Heard learned counsel for the petitioner.

2. By this petition under Article 227 of the Constitution of India the petitioner is challenging the order dated 2/7/2015 passed by the Principal District Judge, Raigad Alibag in Misc. Civil Appeal No.102/2014 allowing their appeal for injunction partly.

3. In the present proceedings the plaintiff filed Special Civil Suit No.867/2012 in the Court of Joint Civil Judge, Senior Division, Panvel for partition of the suit property. The plaintiff also prayed for setting aside tripartite agreement dated 12/6/2006 in respect of suit property bearing Plot No.91 situated at Sector 20, Ulwe, Navi Mumbai ad-measuring 1050 sq. mtrs. and agreement dated 28/5/2008.

4. In that suit the plaintiff preferred an Application Below Exh.5 for an order of injunction restraining the respondents from carrying out any construction activities in the suit property and also injunction against CIDCO from issuing completion approval certificate. That application was rejected by the Trial Court by judgment and order dated 4/8/2014. Hence the plaintiff preferred Civil Misc. Appeal No.102/2014. The Appellate Court partly allowed the plaintiff's application for injunction vide order dated 2/7/2015. Hence the present Writ Petition.

5. Learned counsel appearing on behalf of the plaintiff submits that the Appellate Court erred in only directing the defendant to give security of Rs.60 Lakhs and injunction against him from creating any third party right in respect of Flat No.704 in B Wing ad-measuring 985 sq. ft. situated on the 7th floor of the building constructed on the suit plot. The learned counsel for the plaintiff submitted that as per the plaintiff's share, the plaintiff is entitled to 50% FSI of the total area ad-measuring 1050 sq. mtrs.

6. Learned counsel for the plaintiff submits that at the time of passing the impugned order the Appellate Court in paragraph 40 held that defendant No.5 to deposit Rs.15 Lakhs per flat for remaining 4 flats by way of security. He submitted that the Court has not given any reason on what basis the Court has decided the value of the flat @ 15 Lakhs. He further submits that though the Appellate Court gave a finding in favour of the plaintiff, the Court has partly allowed their application. Hence impugned

order passed by the Appellate Court is required to be modified by directing Defendant No.5 to provide adequate security.

7. It is to be noted that in paragraph 40 it is specifically recorded by the Appellate Court that only one unsold flat remained with defendant No.5. Hence the Appellate Court directed defendant No.5 not to create any third party interest in respect of unsold flat 704. The Appellate Court has further directed defendant No.5 to deposit amount of Rs.60 Lakhs by way of a security. It is to be noted that defendant 5 purchased right for development in respect of the suit property by tripartite agreement dated 12/6/2008 for a sum of Rs.85 Lakhs.

8. Considering the total compensation/price paid by defendant No.5 I do not find any reason to interfere in the well reasoned order passed by the District Judge in Misc. Civil Appeal No.102/2014. Hence the Writ petition stands rejected.

JUDGE