

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10272 OF 2015

Sapphire Co-operative Housing Society Limited... Petitioner

Vs.

M/s. Nilu Properties and another ... Respondents

Mr. Vishwajit P. Sawant a/w. Mr. Nikhil Patil i/b. Mr. P. M. Jadhav for
Petitioner.

Mr. G. S. Godbole, Senior Advocate i/b. Mr. Nilesh M. Wable for Respondent
No.1.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 05, 2016

P.C. :

Heard Mr. Sawant, learned Counsel for petitioner and Mr. Godbole, learned Senior Counsel for respondent No.1 at length. On the oral application made by Mr. Sawant, leave to delete respondent No.2 is granted. Amendment shall be carried out forthwith. Rule. Mr. Wable waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 18.09.2015 passed by the learned Ad-hoc District Judge-2, Pune in Miscellaneous Civil Appeal No.61 of 2015. By that order, the learned District Judge allowed the appeal preferred by the respondent No.1, hereinafter referred to as defendant No.2, and quashed and set aside the judgment and order dated 30.01.2015 passed by the learned Civil Judge, Junior Division, Pimpri, Pune below exhibit-5 in R.C.S. No.201 of 2014 and dismissed the application taken out by the petitioner, hereinafter referred to as plaintiff, seeking injunction restraining defendants No.1 and 2 from

carrying construction over Survey No.25, Hissa No.2/1/1, 2/1/2 and 2/1/3 admeasuring about 2321.19 sq.mtrs. equivalent to 24976 sq.ft. situate at Village Pimple Nilakh, Taluka Haveli, District Pune within the municipal limits of Pimpri Chinchwad Municipal Corporation (for short 'suit property').

3. Mr. Sawant submitted that defendant No.2 relied upon consent dated 09.01.2013 purportedly given by members of the plaintiff society for amalgamation of Survey No.25, Hissa No.2/1, 2/2 and 2/3 and Surevey No.25, Hissa No.1/ABCD/2 at Pimple Nilakh, Pune. He submitted that in fact, perusal of this document (exhibit F-1 at pages 310 to 313) will show that it was not the consent for amalgamation of the said plots. He submitted that in paragraph 15, the learned District Judge has recorded that defendant No.2 has obtained consent of members of plaintiff's society for amalgamation of the three plots including the plot purchased by defendant No.2. He submitted that specific contention was raised before the appellate Court and the same is recorded in paragraph 18 of the impugned order. However, though the learned District Judge referred to this contention, no finding is recorded.

4. On the other hand, Mr. Godbole submitted that in fact consent of the members of the plaintiff's society is not necessary in view of the development agreement entered into by and between defendant No.1 and the owner. He further submitted that in fact plaintiff suppressed that they had made complaint before the Pimpri Chinchwad Municipal Corporation and the City Engineer of the Corporation had heard the plaintiff. He submitted that on 04.04.2014, the hearing was conducted by the City Engineer of the Corporation and the minutes are at exhibit-G (pages 319 and 320). On the other hand, Mr. Sawant submits that plaintiff have raised objection before the Municipal Commissioner to the

effect that minutes are wrongly recorded.

5. Mr. Godbole, upon taking instructions from Mr. Mahesh Yadav, Partner of defendant No.2, consents for setting aside the impugned order. He submits that defendant No.2 will serve additional documents on plaintiff on or before 12.02.2016, if they so desire. Mr. Sawant states that plaintiff will also serve additional documents on defendants in case they intend to rely on these documents on or before 12.02.2016. Learned Counsel appearing for the parties state that parties will appear before the trial Court on 12.02.2016 and for that purpose, no fresh notice be issued to them. By consent of the parties, the trial Court's as also appellate Court's order may be set aside and the trial Court may be directed to dispose of the application exhibit-5 in a time bound manner after considering all the contentions that may be advanced by the parties, including the contentions recorded in this order.

6. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. Judgment and order dated 18.09.2015 passed by the learned District Judge as also the judgment and order dated 30.01.2015 passed by the learned trial Judge are quashed and set aside;
- b. Application exhibit-5 is restored to the file of the trial Court;
- c. Parties shall exchange the additional documents on which they propose to rely, on or before 12.02.2016;
- d. Parties shall appear before the learned trial Judge on 12.02.2016;
- e. The learned trial Judge is requested to dispose of the application exhibit-5 as expeditiously as possible, and in any case,

on or before 29.02.2016;

f. All the contentions of the parties on merits are expressly kept open;

g. In the meantime, the interim order that was operating during pendency of exhibit-5 shall remain in force as ad-interim order;

h. Continuation of the ad-interim order shall not be construed as expression of merits of the case either way;

i. Rule is made absolute in the aforesaid terms with no order as to cost.

7. Parties to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

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