

Sequeira

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

*APPEAL FROM ORDER NO. 1105 OF 2014
Along with
Civil Application No.1334 of 2014
Along with
Writ Petition No. 11575 of 2014*

Shri Shailesh Sevantilal Shah
-Proprietor of M/s Sunder
Developers and 4 ors.

... Appellants

V/s.

Shri Kushalraj M.Parmar

... Respondent.

Mr.Ashutosh Gole, for Appellants in A.O No.1105 of 2014 and Applicants in C.A. No.1334 of 2014 and Petitioners in W.P. No.11575 of 2014.

Mr.K.K.Malpathak, for Respondent in A.O. No.1105 of 2014 and W.P. No.11575 of 2014, for Respondent No.1.

*Coram : N.M. Jamdar, J.
Friday 10 June, 2016.*

Oral Order. :-

By the Order passed on 5 May 2015 by K.K.Tated, J. the Appeal from Order as well as Writ Petition have been directed to be heard together. They have been argued together and are disposed of by this common order.

2. The Writ petition No.11575 of 2014 challenges the order passed by the District Judge, Thane on 12 May 2011 allowing the Appeal filed by the Respondent and granting an order of injunction in the Special Civil Suit No.147 of 2010 filed by the Respondent No.1, in the District Court, Thane.

3. The Appeal from Order No.1105 of 2014 arises from order passed by the Civil Judge, Senior division, Thane dated 13 August 2014 rejecting the application for temporary injunction filed by the Appellants, below Exh.5 in Special Civil Suit No.127 of 2014.

4. Writ Petition is taken up first. The suit property is old Survey No.411, New survey No.169, Hissa no.7 admeasuring 1440 square yards at village Navghar, district Thane. The suit was filed by the Respondent No.1 bearing Special Civil Suit No.147 of 2010. In this suit the Respondent No.1 sought a declaration that the Petitioners have no right or interest in the suit property and sought an order of injunction. The Respondent No.1 also sought temporary injunction which was rejected by the Civil Judge, Thane. In the Appeal by the Respondent No.1, both the Appellants as well as Respondent No.1 were restrained from carrying out any construction. This order dated 12 May 2011 has been challenged by the Petitioner in the year 2014. The learned District Judge, passed this order putting both parties under restraint, because of the various deeds that were executed in respect of the suit property and the confusion that prevailed. The learned District Judge, found that it was appropriate that the suit needed to be tried on merits and neither of the parties could be

permitted to carry out any construction during the pendency of the suit. The approach of the learned District Judge in view of the various deeds and the complexity that has been narrated in the impugned judgment, cannot be faulted. This order is in operation since last four years and it will be appropriate if the suit itself is directed to be disposed of at an early date.

5. As regards the Appeal from order wherein the application of the Appellants for temporary injunction has been refused, the learned District Judge has rightly observed that in view of the order passed earlier in the Appeal arising from Suit No.147 of 2010, such relief cannot be granted to the Appellants. The learned counsel for the Appellants however submitted that there is certain construction carried out by the Appellants outside the suit property and only minuscule part falls in the suit property which is subject matter of Special Civil Suit No.147 of 2010. He submitted that in view of the injunction granted therein the Appellant is not able to carry out any further activities even though substantial portion lies outside the suit property. He submitted that joint measurement be directed to be carried out. This submission and request was not made by the Appellant before the Civil Judge, Senior division and it is for the first time made in this Appeal. If the Appellants are desirous of seeking such relief, it will be open to the Appellants to take out appropriate application in the pending suits. If such an application is made the learned Judge will consider the same on its own merits after giving opportunity to the Respondents.

6. Considering the fact that for last four years both the parties have been enjoined from carrying out any construction in the suit property and that the learned District Judge in Miscellaneous Appeal has also directed expeditious disposal of the Suit, this is a fit case where both the suits can be tagged and disposed of at an early date.

7. As far as the clubbing of both these suits, it is open to the parties to make appropriate application to the concerned Judge. After the suits are so clubbed together, the Civil Judge will give priority to the disposal of the suits and consider disposing of the same within period of one year from the date they have been so clubbed together. Both the Appeal from Order No.1105 of 2014 and the Writ petition No.11575 of 2014 are accordingly disposed of.

8. Civil Application also stands disposed of accordingly.

(N.M. Jamdar, J.)