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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1513 OF 1994

Bombay Real Estate Development Co. Pvt. Ltd. & Anr. ...Plaintiffs

vs.

Mithibai D. Wadkar & Ors.

...Defendants

.....

Mr. Mayur Khandeparkar, a/w. Mr. Mandar Soman and Mr. Dinesh Shah,
i/b. Lilani Shah & Co., for the Plaintiffs.

....

CORAM : S.C. GUPTE, J.

DATED : JANUARY 7, 2016

P.C. :

. This suit is filed by the Plaintiffs for a declaration of their ownership of lands described in **Exhibit 'B'** to the plaint and an order against the Defendants to handover vacant and peaceful possession of the land. These reliefs are contained in prayer clauses (a) and (b) of the plaint. Prayer clauses (e-i) and (e-ii) seek a permanent injunction against the Defendants from putting up or erecting any structure upon or parting with possession of or inducting any third person into or otherwise invading or infringing rights of the Plaintiffs in respect of or entering into or remaining or being or committing trespass upon, the land. The Plaintiffs do not press the other prayers in the suit.

2. By an order dated 9 July 1999, the suit was set down for

hearing as an undefended suit against Defendant No.1 and Defendant Nos. 5 to 8 whilst noting abatement of the suit against Defendant Nos.3 and 4. By a subsequent order dated 1 October 1999, the suit was directed to proceed against even Defendant Nos. 2(a) to 2(c) as an undefended suit, for want of a written statement. In the meantime, by an order dated 19 March 1999, by a self-operative order, the suit was dismissed against Defendant No.9. Accordingly, the suit has come on board for ex-parte decree against Defendant Nos. 1, 2(a) to 2(c) and 5 to 8.

3. Learned Counsel for the Plaintiffs tenders a compilation of original documents together with an affidavit of evidence of Kali Vaid, Director of Plaintiff No.1 (P.W.1) dated 22 September 2015 in lieu of examination-in-chief. The documents listed at Sr. Nos. 1 to 6 of the compilation of documents are taken on record marked **P-1 to P-6**, respectively.

4. One Byramjee Jeejeebhoy Pvt. Ltd., a Company registered under the provisions of the Companies Act, 1956, was the owner and, as such owner, seized and possessed of immovable properties comprising various plots of land including, *inter alia*, the land bearing Survey No.32, corresponding to CTS 812 situate, lying and being at Village Poisar, Borivali (East), Mumbai ("the suit property"). A certified true copy of deed of conveyance from the original owners of the suit property - M/s. Nanabhoy Jeejeebhoy Pvt. Ltd. (Plaintiff No.2 herein) to Byramjee Jeejeebhoy Pvt. Ltd. executed on 24 July 1981 is on record (**Exhibit P-2**). Byramjee Jeejeebhoy Pvt. Ltd. entered into an agreement for sale of the suit property and its development with Plaintiff No.1. In part performance thereof, Plaintiff No.1 was put in possession of the suit property. A power of

attorney was also executed by Byramjee Jeejeebhoy Pvt. Ltd. in favour of Plaintiff No.1. The original agreement between Byramjee Jeejeebhoy Pvt. Ltd. and Plaintiff No.1 is on record (**Exhibit P-3**). Subsequently, by an order dated 21 December 1988, passed in Company Petition No.868 of 1988, a certified copy whereof is on record (**Exhibit P-4**), the right, title and interest of Plaintiff No.2 in respect of the suit property was acknowledged and confirmed. Plaintiff No.2 has also executed a power of attorney in favour of Plaintiff No.1 in respect of the suit property. That power of attorney is also on record. (**Exhibit P-1**) Having regard to these documents, the Plaintiffs' title to the suit property stands established.

5. The Plaintiffs have set out the circumstances in which the Defendants trespassed the suit property and constructed structures thereon. The averments in this behalf are to be found in paragraphs 7 to 10 and 13 and 14 of the plaint. The examination-in-chief of P.W.1 supports these allegations. The Plaintiffs have, in the premises, proved that the Defendants have unauthorizedly and illegally trespassed on the suit property and erected structures or constructions on the suit property, thereby infringing the rights and interest of the Plaintiffs to and in the suit property. There is a case, accordingly, for a decree against the Defendants directing them to vacate and remove themselves from, and handover to the Plaintiffs vacant and peaceful possession of, the suit property.

6. Accordingly, the suit is decreed in terms of prayer clauses (a), (b), (e-i) and (e-ii) with costs. The Court Receiver appointed of the suit Court property in terms of the order passed by this Court on 2 August 1995 shall handover formal possession thereof to the Plaintiffs. After handing over such possession to the Plaintiffs, the Receiver to stand discharged

without passing accounts but subject to his payment of charges and expenses by the Plaintiffs. The originals of the documents tendered in evidence shall be returned to the Plaintiffs after keeping on record certified true copies of the same. The suit is disposed of accordingly.

(S.C. GUPTE, J.)