

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.977 OF 2008

M/s. Deepak Builders Pvt. Ltd. & Anr.Plaintiffs

V/s.

Nutan Durgapada Vikas Mandal & Ors.Defendants

Mr. Rupesh Geete i/b. I.C. Legal for the plaintiffs.

None for the defendants.

CORAM : K.R.SHRIRAM,J

DATE : 15th JULY, 2016

P.C.:-

1 The suit has been filed by the plaintiffs for a declaration that the plaintiffs are the absolute owners of the property described in Exhibit 'A' to the plaint, which reads as under :-

“All that piece or parcel of land together with the hereditaments and structures standing thereon bearing Survey No.8, Hissa No.32, corresponding CTS No.160 admeasuring approximately 19 Guntas, i.e., 2,299 sq. yds. Or 1,922 sq. mts. at Village Marol, Taluka Andheri, District Mumbai Suburban and bounded as follows :

i.e. on or towards the East by Survey No.8, Hissa No.31;

i.e. on or towards the West by Survey No.8, Hissa No.21;

i.e. on or towards the North by Survey No.8, Hissa No.30;

i.e. on or towards the South by Survey No.8, Hissa No.33;

2 It is the case of the plaintiffs that the plaintiffs and the defendants had entered into consent terms and filed the consent terms in L.C. Suit No.2501 of 1986 which was pending in City Civil Court, Mumbai and the suit came to be decreed in terms of the consent terms

on 26th March, 1987. As per the consent terms the plaintiffs were to pay a sum of Rs.57 lacs to the defendants which the plaintiffs paid. Despite receiving payment the defendants did not fulfill their obligations under the consent terms and hence this suit came to be filed.

3 The plaint has been served upon the defendants. The defendants though served have not filed any written statement. Therefore, the suit came to be transferred to the list of undefended suits by an order dated 29th June, 2010 read with order dated 1st August, 2011.

4 Today, the counsel for the plaintiffs tenders an affidavit of one Sanjay K. Kanungo, the Director of the plaintiff no.1 in lieu of examination in chief, affidavit of documents of Sanjay Kanungo and also compilation of documents. The same are taken on record and marked **Exhibit P-1** collectively.

5 Under Order 8 Rule 5 of the Code of Civil Procedure, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of

the defendant, shall be taken to be admitted except as against a person under disability. Rule 5 of Order 8 also provides that where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability.

6 There is nothing on record to show that the defendants have any disability. In the circumstances, the plaintiffs are entitled to decree as prayed for. The decree be drawn up accordingly.

7 The suit stands disposed.

(K.R.SHRIRAM,J)