

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL NO. 488 OF 2016****IN****NOTICE NO. 1030 OF 2015****IN****EXECUTION APPLICATION NO. 577 OF 2013****IN****SUIT NO. 3896 OF 1990****WITH****NOTICE OF MOTION NO. 2269 OF 2016****IN****APPEAL NO. 488 OF 2016**

Mrs. Saroj Pravin Desai & Ors.

.. Appellants

versus

Ashford Developers Pvt. Ltd.

.. Respondent

Mr. V. Krishna, Mr. P. D. Lakhotia, Mr. Gaurav Pandey i/b. M/s. Juris Consillis for Appellants.

Mr. S. U. Kamdar – Senior Advocate with Mr. Chirag Kamdar with D. V. Deokar, Mr. Subodh Joshi, Pinakin Modi, Ms Jailaxmi G., Ms Priyanka Saraswat i/b. M/s. Parimal Shroff & Co. for Respondent.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 24 NOVEMBER 2016

P.C.:

1] Heard learned counsel for the appellants. It is not in dispute that the respondent – decree holder approached the learned Single Judge in the execution application for a direction to assist in execution of a conveyance document in terms of the consent terms already executed, upon which the decree was obtained by the decree holder. It is also not in dispute that when the matter came up for consideration, several grounds were raised to resist the application filed by the decree holder contending that there is no declaratory nature of any kind in order to assist execution of a conveyance document. Learned Single Judge after referring to several judgments of High Courts of

Calcutta, Madhya Pradesh and Punjab & Haryana referred to by learned counsel for judgment debtor in paragraphs 12 and 13 opined as under :

“12. I do not see how these judgments come to the assistance of the Defendants since they are only restricted to the cases where the Suit resulted in a declaratory decree. There can be no doubt that in a decree which is purely declaratory, question of execution cannot arise. However, in the present case, consequential reliefs flow out of the declarations. Perusal of the Consent Terms will dispel all doubts that the Defendants carry as to its enforceability. With specific reference to the clauses of the Consent Terms namely, clauses 16, 17, 20, 21 and 22, Mr. Krishna had submitted that as far as the Defendant Nos.1 to 4 are concerned, these clauses merely result in declarations. Even Clause 27 which requires the Defendant Nos.1 to 4 to do all acts, deeds and matters and things and to sign and execute all papers, documents, writings more perfectly and effectually vesting the suit property in the Plaintiffs, does not mean that the Plaintiff is entitled to any further assistance from this Court by executing the conveyance.

13. It is evident from Mr. Krishna's submissions that although 1148 sq.mtrs are to be conveyed, the Defendants are not in position to convey the said area since they do not have the same in their possession. The Defendants have not obtained conveyance of area beyond 881 sq.mtrs. In other words, in respect of 267 acres, they were yet to be obtain a conveyance. It is for this reason that the Defendants cannot convey the entire area of 1148 sq.mtrs. These state of affairs obviously entails that the consent decree cannot be executed in its entirety at present. However, to my mind, there is no reason as to why the decree cannot be executed to the extent of 881 acres. In the course of his submissions and upon a query from the Court, Mr. Kamdar had tendered a plan showing the demarcation of the area of which conveyance is sought. He also relied upon the statement showing the total area of the land Gaon Namuna from the extract of the lands record office maintained by the Talathi's office at Village: Jambivali, Taluka: Ambernath and submitted that this extract shows total area of 356.45 hectares was available which is equivalent to 883.43 acres.”

2] Since there were certain doubts with regard to the plan annexed in order to understand the two pieces and parcels of land sold by Ramanlal Dalsukhbhai Shroff, the learned Judge opined that there has to be further survey to understand and identify the measurement and demarcation of the land admeasuring 881 acres forming subject matter of consent terms (out of 1148 acres). The directions given at internal page 13 of the impugned order are as under :

“(I) The Notice is made absolute in the following terms.

(II) The Prothonotary & Senior Master shall appoint a chartered surveyor from the panel maintained by this Court within a period of two weeks from today to identify, measure and demarcate the land admeasuring 881 acres forming subject matter of the Consent terms.

(III) Upon the surveyor being appointed, he shall tender an estimate of costs to the Plaintiffs who shall deposit the amount so indicated and further amounts as required with the Prothonotary & Senior Master from time to time so as to cover the costs of survey, demarcation preparation of the final plan of the land to be conveyed and the final report of the surveyor.

(IV) After verifying the schedules in the said conveyance deeds in respect of the 881 acres and after ensuring that the same is reflected in the land records, the Chartered Surveyor shall file a report on that basis along with a plan to be prepared by the Chartered Surveyor. This plan will thereafter annexed to the conveyance. Necessary changes shall be made to the draft conveyance in accordance with the said plan. The Prothonotary & Senior Master shall thereafter execute the conveyance at the cost of the Plaintiffs.

(V) The defendants shall pay costs fixed at Rs.15,000/- to the State Legal Services Authority within two weeks from today.”

3] In order to hear the appeal on merits, we find no good ground in the light of observations made in paragraphs 12 and 13 of the

impugned order and further already there is compliance with the directions of the learned Single Judge which are impugned before us.

4] The assistance of the Chartered Surveyor was taken by the Prothonotary and Senior Master and after completing the exercise in terms of the directions in the impugned order, report of the Chartered Surveyor along with the plan are already before the Executing Court. It is admitted across the bar that even the exception to the surveyor's report is placed on record. The learned Judge has to take a call on the said exception and proceed further either to give further directions or proceed to direct the execution of conveyance at the costs of the plaintiffs. When the matter is pending at that stage, we fail to understand why we should intervene at this stage especially when there is no prejudice being caused as such by the impugned order to the appellants before us.

5] Under these circumstances, we are of the opinion that nothing remains for us to consider. However, the appellants are at liberty to take further course of action depending upon the outcome of the proceedings pending before the Executing Court.

6] Appeal is disposed of.

7] In view of disposal of appeal, notice of motion no. 2269 of 2016 does not survive and is disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)