

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 41 OF 2016

THE SUSHEGAD CO-OP. HOUSING
SOCIETY LTD, THR. ITS CHAIRPERSON
MS. VASUDHA GUMASTE.

... Appellant

Versus

SHRI. AMARNATH VISHNU BHAT
DHAULIKAR (SINCE DEC THR. LRS.)
AND 4 ORS.,

... Respondents

Mr. Gajendra Usgaonkar, Advocate for the Appellant.
Mr. R. G. Ramani, Advocate for Respondents no. 1(a) to 1(c), 2,
3 and 4.

Coram:- F. M. REIS, J.

Date:- 10th February, 2017

P.C.:

Heard Mr. G. Usgaonkar, learned Counsel appearing for the Appellant and Mr. R. G. Ramani, learned Counsel appearing for the Respondents.

2. The above appeal challenges the Judgment passed by the Court below whereby the Appellants have been directed to rectify the Sale Deed specifying the correct proportionate area of the land appurtening to the built-up area owned by the members of the Appellant Society.

3. Mr. Usgaonkar, learned Counsel appearing for the Appellant has vehemently argued that plot B wherein the subject

construction has been put up is an area of 2826 sq. mtrs whereas by the impugned order the Appellants have been directed to rectify the Sale Deed to show the area as 2269 sq.mtrs. The learned Counsel further pointed out that the total plot area was 2826 sq.mtrs and, as such, there is no reason for any rectification, as, according to him, the built-up area of the building would cover the entire area. Learned Counsel has, thereafter, taken me through the Judgment passed by the learned Judge to point out that the learned Judge has erroneously come to the conclusion that the plot area is to be rectified to 2269 sq.mtrs.

Learned Counsel further submits that as per the plan approved by the Town and Country Planning Department, plot B is shown to have an area of 2826 sq.mtrs and as such the question of any rectification would not arise. Learned Counsel further submits that the learned Trial Court has rightly appreciated the material on record and come to the conclusion that the suit filed by the Respondents is liable to be dismissed. Learned Counsel further submits that the FSI available at the relevant time was 80% of the plot area and not 100% as claimed by the Respondents herein.

4. On the other hand, Mr. R. G. Ramani, learned Counsel appearing for the Respondents submits that as per the original agreement the plot area of the land agreed to be purchased by the members of the Society was in fact shown to be only 713

sq.mtrs. Learned Counsel further pointed out that in terms of the agreement executed between the parties, the Respondents were liable to convey to the Appellant Society the apportioned area of the land proportionate to the built-up area belonging to the members of the Appellant Society. Learned Counsel further submits that there are 24 members in the Society, and, as such, the total built-up area works out to 1733.55sq.mts. Learned Counsel further submits that learned Appellate Court has accordingly correctly found that the Sale Deed has to be rectified to disclose that the plot area would admeasure 2269 sq.mtrs. Learned Counsel further submits that the FSI at the relevant time was 100% and there is no material produced by the Appellant to show that FSI at the relevant time was 80%.

5. I have duly considered the arguments put forth by the learned Counsel and I have also gone through the records.

6. It is not disputed that in case the FSI at the relevant time was 100%, the effective plot area appurtenant to built-up area of the members of the Society would in fact be 2269 sq.mts. In such circumstances, the only question in dispute is whether the FSI at the relevant time was 80% or 100%.

7. On perusal of the material on record and findings of the learned Judge, there is no material produced on record by the

Appellant Society to contend that the FSI at the relevant time was 100%. The Appellant failed to produce any material on that count and as such the learned Court below has accepted the contention of Respondents that FSI at the relevant time was 100%. As such, I find no substantial question of law arises at all.

It cannot be disputed that the proportionate area of the land apportioned to built-up area belonging to all the members of the Society would be reflected in the Sale Deed executed by the Respondents in favour of the Appellant.

8. In such circumstances, I find no infirmity committed by the learned Judge whilst passing the Impugned Judgment.

9. The Appeal stands, accordingly, rejected.

F. M. REIS, J.

msr