

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.496 OF 2017
IN
FIRST APPEAL NO.1329 OF 2012

M/s. Shri.Datta Developers and Ors. ...Applicants
Versus
Smt.Prabhavati Prabhakar Paralkar and ...Respondents
Ors. _____

Ms.Usha Purohit for Applicants.
Mr.N.D.Jaywant for Respondents.

CORAM: S.C.GUPTE,J
DATED: 11 April, 2017

PC:-

1. Heard Learned Counsel for the parties. This Civil Application is taken out in a First Appeal concerning a flat bearing flat No.303 in a building known as "Datta Enclave" at Parel in Mumbai. The Respondents filed the present suit seeking enforcement of an agreement executed by the Appellants, who are developers of the building Datta Enclave, to allot the said flat to the Respondents. Respondent Nos.1 to 3 are owners of another plot also situated in Parel in Mumbai which houses a building known as Matrukrupa, which was being developed by one Manik developers. It is submitted by learned Counsel for the Appellants/Applicants that the

agreement in respect of flat No.303 was executed in favour of Respondents No.1 to 3 in lieu of another agreement executed between Manik Developers and Respondent Nos.1 to 3 in respect of development of the Matrukrupa plot. Two parking lots admeasuring 285 sq. ft. in the stilt area in the new building constructed in this property were to be allotted to Respondent Nos.1 to 3 for the purpose of constructing a temple for the exclusive use of the allottees. However, since these parking lots could not be eventually allotted, the Appellants herein, who were partners with Manik developers in another project, namely, construction of the building known as Datta Enclave, agreed to allot flat No.303 in Datta Enclave to Respondent Nos.1 to 3 in lieu of the said parking area to be provided in Matrukrupa plot. The suit was decreed by the Trial Court. The Appellants in the present First Appeal have challenged that decree. The Appeal has been admitted by this Court and the execution of the decree in favour of Respondent Nos.1 to 3 has been stayed.

2. The present controversy concerns execution of conveyance of Matrukrupa property by Manik developers in favour of the co-operative housing society of flat owners in the building. Apparently, this controversy has nothing to do with flat No.303 allotted by the Appellants herein in favour of Respondent Nos.1 to 3. Learned Counsel for the Appellants,

however, submits that since flat No.303 in Datta Enclave was allotted to Respondent Nos.1 to 3 in lieu of two parking plots to be allotted to them in Matrukrupa building, the developers of Matrukrupa building, namely, Manik developers, still hold rights in respect of these two parking lots. The controversy as to the ownership and possession of these parking plots has really nothing to do with the conveyance of Matrukrupa property in favour of the society of flat owners. (The society is arraigned as Respondent No.4 to the present Civil Application.) In the event the Appellants succeeds in the First Appeal, the decree of possession in respect of flat No.303 may not stand. That, however, cannot possibly come in the way of the conveyance of Matrukrupa plot, with which the present First Appeal has no concern. The conveyance is being executed by Manik developers, another entity, in favour of the society of flat owners of that building who are also not parties to the present suit or First Appeal.

3. The Civil Application is, accordingly, dismissed. It is made clear that this Court has not considered the merits of the controversy as to the two parking lots in Matrukrupa building in any way, while deciding the present Civil Application.

(S.C.GUPTE,J)