

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 130 OF 2017

Moojee Lukhmidass (Regd) a partnership firm ...Applicant
through Krishkumar Ratansi Bhatia

Versus

The Tahsildar Borivali & Ors ...Respondents

Mr PK Samdani, Senior Advocate, with Viral Shukla & Priti Patel
i/b M/s. Shukla & Associates, for the Applicant.

CORAM: G.S. PATEL, J
DATED: 26th July 2017

PC:-

1. This is an application under Section 24 of the Code of Civil Procedure 1908 to transfer BCC Suit No. 10749 of 1991 back to this court where it was originally filed as Suit No. 3062 of 1991. The suit is in respect of a substantial tract of land, Survey Nos. 5, 6, 13(part) as also Survey No. 158 Hissa No. 5, CTS No. 13 of Village Magothane and Survey No. 114 Hissa No. 2, Survey No. 115, Hissa No. 2 of Village Kandivali, Taluka Borivali which is described as the larger plot. This was sub-divided into ten smaller plots and the Plaintiffs apparently undertook redevelopment of nine of these ten plots.

2. There was an agreement of 2nd November 1977 with Karnataka Traders in respect of sub-divided plot Nos. 4 to 10. According to the Plaintiffs, the Applicants, Karnataka Traders, inducted Defendant No. 5 into possession of some open land between sub-divided plot Nos. 6 and 7 admeasuring 6411 sq mtrs and also onto open land near plot No. 8 admeasuring 1951 sq. mtrs. These spaces were respectively shown in reservation as recreation ground and as a temple and it is this area of the open land for the recreation ground and temple admeasuring 8,362 sq mtrs in all that is the subject matter of the suit. The Plaintiffs seek a declaration that they are the owners of this land and that Defendants Nos. 1 and 2 have no right in respect of it, and that the auction sale of this property is void.

3. Leaving aside the prayers on merits, it is clear that an area of over 8,000 sq mtrs in this locality in Mumbai cannot conceivably be of a value of less than Rs 1 crore. The only question, if at all, is how much higher it is and in any case the maximum *ad valorem* court fee of Rs. 15,000/- payable in 1991 has already been paid. Having regard to this, I believe the application for transfer is justified.

4. It is only necessary to note that Defendant No. 5 has originally claimed the value of suit is less than Rs. 1 crore and, therefore, on the basis of that representation on 22nd July 2016 the suit was got transferred to the Bombay City Civil & Sessions Court.

5. The Respondents are absent though served.

6. The Miscellaneous Civil Application is made absolute in terms of prayer clause (a).

7. Till the transfer is effected and the suit is listed in this Court, the City Civil Court will not proceed further with the suit.

(G. S. PATEL, J)