

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER NO. 954 OF 2014  
WITH  
CIVIL APPLICATION NO. 1160 OF 2014**

|                      |     |             |
|----------------------|-----|-------------|
| Ankur CHS Ltd        | ... | Appellants  |
| <i>Versus</i>        |     |             |
| NRC Construction Ltd | ... | Respondents |

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**Mr YS Jahagirdar, Senior Advocate, i/b AR Gole, for the  
Appellants/Applicants.**  
**Ms Shewta Singh, i/b Viral Vora, for the Respondents.**

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**CORAM: G.S. PATEL, J  
DATED: 6th June 2017**

**PC:-**

1. The Appellants are a cooperative society. They take exception to an order dated 20th March 2014 dismissing their Motion for interim relief. The Plaintiffs sought to restrain the Defendants from constructing on a portion of land. The Plaintiffs claim that this land was part and parcel of the society plot admeasuring 3577.20 sq. meters. Before the learned Single Judge a rough sketch of the Plaintiffs' building and the open space was placed on record. Those documents showed, by way of a dotted line, the existence, at some point in the past, of a compound wall. This was said to have been erected to prevent trespass by outsiders. But in any case this was a

wall that either collapsed or was broken down and has not been reconstructed since. What the Plaintiffs sought to safeguard was a portion of land beyond this erstwhile compound wall. They complained that the Defendants had fixed tin sheets and were proposing to erect another building on that portion. The Plaintiffs claim title to the entire land on the basis of a deemed conveyance.

2. There is no manner of doubt that there was a Development Agreement and there are individual flat purchase agreements also. The Defendants claim rights under an unregistered Deed of Assignment in respect of this disputed property. From the Defendants' perspective this creates difficulties. That is a document that will not readily be received in evidence. It is one that requires both registration and stamp. The consequences of not having either are serious. When it comes to a question of possession, however, Mr Jahagirdar for the Plaintiffs says that the Plaintiffs' members and their families have been using this open portion beyond the compound wall for the last many decades ever since the society was formed. At this stage, they are unable to pinpoint a specific document in relation to the additional space. What is however available and which is noted by the learned Single Judge in paragraph 11 of the he impugned order is that there is a sanctioned map of the year 1990. I will, for the purposes of this order, take it that this is today the only document that the Plaintiff does have to show possession of and title to the additional portion. The learned Single Judge held that there was no other document coming forth from the Plaintiffs to show possession. That may be true; but the test in matters like this is not always of the quantity of the documents produced. The rival contentions must be assessed one

against the other. As against a sanctioned map of the year 1990 produced by the Plaintiffs, all that the Defendants admittedly have is an unregistered Deed of Assignment and a unilateral Deed of Declaration subsequent in time. Mr Jahagirdar points out that the Deed of Assignment itself is one that, at best, is arrived at after a series of intervening transactions and transfers, all of which the Defendants will have to prove. As against this, the Plaintiffs' members' individual flat purchase agreements all specifically reference the land in question as being 1951.90 sq. meters, albeit in the context of FSI entitlement. Whether or not this covers the entire plot is a matter that will need to be assessed. In paragraph 12 of the impugned order the learned Single Judge said this:

“12.

3. In my view, the learned Single Judge correctly highlighted the documents in conflict. The other document referenced, viz., , the Deed of Declaration is also one asserted by the Defendants and which will have to be assessed. Whether these documents asserted by the Defendants can operate to perfect or transfer title effectively is a matter to be assessed.

4. The task before the learned Single Judge was, as the Supreme Court has repeatedly held, to preserve to the extent possible, the parties in status quo till the facts in controversy could be determined. I am told that the Defendants have filed a Written Statements. The Plaintiffs have sought an amendment which is under consideration. The suit is of 2013. In my view, dismissing the

Motion would create a possible imbalance and create an irreversible position if the Defendants began to construct on the disputed portion. The Plaintiff's cause would be then all but lost and the suit would then effectively be rendered infructuous. On the other hand, directing the parties to maintain the *status quo* would correctly balance the competing equities. The balance of convenience could safely be said to be with the Plaintiffs and their interests of claims would irreparably be prejudiced if protection is refused. On the other hand, it is difficult for the Defendants, who have since 2015 in any case not proceeded further, and who have only this *prima facie* imperfect documentation available, to claim any overriding equities or assert that they will be prejudiced. There is an ad-interim injunction in terms of prayer clauses (b) and (e) of the Civil Application that was operated from 7th December 2015 (RD Dhanuka J). Prayers (b) and (e) of the Civil Application NO. 1160 of 2014 read thus:

"(b) Pending the hearing and final of the present Appeal from Order this Hon'ble Court be pleased to pass an order of temporary injunction restraining the Respondent and/or any other person or persons claiming through or under the Respondent from engaging in and/or continuing any construction activity or any activity whatsoever, in the Suit Property and/or any part thereof;

(e) Pending the hearing and final disposal of the present Appeal from Order, this Hon'ble Court be pleased to pas an order of temporary injunction restraining the Respondent and/or any other person or persons claiming through or under the Respondent from creating and/or attempting to create any third party interest in the Suit Property and/or party thereof, pursuant to the said Deed of

Assignment and/or said Deed of Declaration or in any manner whatsoever."

5. I believe the suit itself ought to be expedited, and it hereby is. The Trial Court is requested to dispose it of at its earliest convenience. I am not fixing any peremptory date for this.

6. In the meantime, I will confirm the previous ad-interim order in terms of prayer clauses (b) and (e) of the Civil Application, reproduced above.

7. Further, in order to preserve the rights of both sides and the property in *status quo* and to ensure that there is no further controversy going forward, the Court Receiver, High Court, Bombay is appointed as the Receiver of the disputed suit property, i.e., the portion enclosed by the tin sheets erected by the Defendants. He will take formal possession of the disputed open plot, i.e., the suit plot enclosed by the tin sheets, and put his board outside this portion. The possession of the Defendants is not to be disturbed. The Defendants will enter into an agency agreement with the Court Receiver, for the present without payment of royalty or security. This is permitted in view of the injunction granted in terms of prayer clauses (b) and (e). The Court Receiver is not to take possession of the portion admittedly occupied by the Appellant society, viz., its building and parking spaces, and the receivership is restricted only to the portion claimed by the Defendants, i.e., the area or portion around which tin sheets have been erected.

8. All rights and contentions are specifically kept open. Liberty to the parties to apply to the Trial Court for a variation or modification of this order should a change in circumstances warrant.
9. The Appeal and Civil Application are disposed of in these terms. No costs.

**(G. S. PATEL, J.)**