

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1227 OF 2015
WITH
APPEAL FROM ORDER NO. 1223 OF 2015
WITH
APPEAL FROM ORDER NO. 1225 OF 2015
WITH
APPEAL FROM ORDER NO. 1226 OF 2015
WITH
APPEAL FROM ORDER NO. 1228 OF 2015
WITH
APPEAL FROM ORDER NO. 1245 OF 2015

Vipul Suresh Mehta .. Appellant
vs.
M/s. Shree Shubh Enterprises & Ors. .. Respondents

Mr. Dinesh Tiwari i/b. Dinesh Tiwari & Associates for Appellant in all Appeals.

K. Padmashri and Kiran Kulkarni i/b. M/s. Kulkarni & Associates for Respondent Nos. 1 and 4 in all Appeals.

Mr. Bhavin Gada with Vasim A. Shaikh h/f. Vasim A. S. Shaikh for Respondent Nos. 5 and 6 in AO 1225 of 2015 and for Respondent Nos. 6 and 7 in AO 1227 of 2015.

Mr. A. Q. Motiwalla for Respondent No. 5 in AO 1228 of 2015.

Lakshmi Murali i/b. Lakshmi Murali & Associates for Respondent Nos. 6 and 7 in AO 1228 of 2015.

CORAM : M. S. SONAK, J.
DATE : 01 MARCH 2017

P.C :

1] The challenge in each of these appeals is to the order dated 7 August 2015, by which, the appellant's (plaintiff's) notices of motion for appointment of Receiver and for restraining the defendants from creating any third party rights in respect of six suit

flats came to be dismissed.

2] In these appeals, the appellant has impleaded certain parties, who were not defendants in the original suits. Such impleadment was necessary according to the appellants because, the original defendants in the suits, are purported to have transferred the suit flats to these parties.

3] Learned counsel appearing for the newly impleaded respondents submit that they have acquired the suit flats in pursuance of legal and valid documentation from the original defendant no. 1. They claim that such acquisition, in some cases, was before the impugned order dated 7 August 2015 was made. They point out that this circumstance has been referred to in the impugned order as well. They submit that they were not even parties in the suit and therefore, no order as prayed for by the appellant in the notices of motion was rightly made. They submit that in case such an order were to be made, it is they who would be affected.

4] They submit that if the appellant requires any orders against them, they have to be first made parties in the main suit, without which, no orders can be made against them.

5] Learned counsel for the appellant submits that the appellant has several serious grievances against the defendant no. 1, who has defrauded not only the appellant but several other parties. He submits that the appellant is not averse to impleading the subsequent alleged purchasers as parties to the suits. He submits that the appellant may be granted liberty to implead them as parties in the suits and thereafter, to take out appropriate and comprehensive notice of motion, which may be disposed of by the learned trial Judge in accordance with law and on its own merits.

6] This request is quite reasonable. Accordingly, the appellant, who is the plaintiff in each of the suits, is granted liberty to implead such subsequent alleged purchasers as defendants in the suits. The necessary amendment to be carried out within a period of two weeks from today.

7] Leave is also granted to make consequential amendments in the plaint. Copy of the amended plaint to be served upon all the defendants including a newly impleaded defendants. Thereafter, the appellant is also granted liberty to file a comprehensive notices of motion. Such notices of motion as and when filed, shall be disposed of by the learned trial Judge within a period of three months from the date of such filing. Such disposal shall be in

accordance with law and on its own merits. In disposing of such notice of motion, the learned trial Judge need not be influenced by any of the observations made in the impugned order dated 7 August 2015 or the circumstance that the appeals against the same are now being disposed of with these directions. However, it is made clear that all contentions of all parties are specifically left open for consideration by the learned trial Judge.

8] In Appeal from Order no. 1228 of 2015. the appellant has impleaded one Advocate Ashwin Bhalekar as a respondent. Learned counsel for the appellant states that this was done because on behalf of the defendant no. 1 (developer / builder), it was stated that one of the suit flats was transferred to said Advocate Ashwin Bhalekar. However, learned counsel who now appears for the Advocate Ashwin Bhalekar in the said appeal categorically states that he has not purchased any one of these six flats (suit flats) and the information given by the builder / developer is wrong or inaccurate. Learned counsel for the builder / developer also states that none of the suit flats have been sold to Advocate Ashwin Bhalekar and there was some communication gap in giving the said information. He states that the real purchaser is Mr. Imran Sunesara. In these circumstances, the appellant is granted leave to implead the said Mr. Imran Sunesara as a defendant in

the suit.

9] With the aforesaid directions, the appeals are disposed of.
There shall be no order as to costs.

10] All concerned to act on basis of authenticated copy of this
order.

(M. S. SONAK, J.)

Chandka