

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 44 OF 2009

M/s. Parivar C.H.S.Ltd.	... Applicant
Versus	
Baby K. Shetty & Anr.	...Respondents

**WITH
CIVIL REVISION APPLICATION NO. 620 OF 2008**

M/s. Ameya Developers	...Applicant
Versus	
Baby K. Shetty & Anr.	...Respondents

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Mr. Yogesh K. Deshpande for the Applicant in C.R.A.No. 44 of 2009.
Ms. Sanjukta Somantak for Respondent No.1.

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CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 6, 2017

P.C. :

1. The applicants and respondents are same in both Civil Revision Applications. In these Civil Revision Applications, the both orders dated 1st October 2008 passed by the learned City Civil Judge, Borivali Division, Dindoshi Court are under challenge. The plaintiffs i.e. respondent no.1 in both the Civil Revision Applications had filed the Suit No. 474 of 2007 for a declaration that she is entitled to remain in lawful possession of the suit premises and praying for the permanent injunction against defendant no.1, especially the builder, that the defendants could not disturb her lawful and peaceful

occupation and possession of the suit premises and should not interfere and disturb in any manner whatsoever.

2. The defendant no.1 is a builder and the defendant no.2 is a Co-operative Housing Society, who had entered into the development agreement on 5th October 2006 with defendant no.1–builder about the development of suit premises. The plaintiff has objected the development activities, as defendant no.1-builder is trying to encroach upon her suit premises and thereby causing disturbance to the peaceful possession and occupation of the plaintiff in the suit premises. The main contentions are raised in the plaint and the prayers are against defendant no. 2 i.e. the society, who has assigned the developmental rights to defendant no.1, who is a common party. In fact, defendant no. 2 by giving a reply to Notice of Motion No. 385 of 2007 filed by the plaintiff for injunction raised a point of jurisdiction of the City Civil Court on the ground of sections 91, 163 and 164 of the Maharashtra Co-operative Societies Act, 1960. The learned trial Judge took up the issue of jurisdiction and held that the jurisdiction lies with the City Civil Court and also observed that defendant no.1, who is a landlord may file the suit for eviction and the plaintiff may be evicted by following due process of

law. Thereafter, the said order is challenged by both the defendants in these Civil Revision Applications.

3. I have perused the order dated 8th September 2016 passed by the predecessor wherein it is observed that defendant no. 1 has instituted eviction proceeding against the plaintiff in the appropriate Court of law, when the order of injunction that the possession of the plaintiff should not be disturbed without following due procedure of law then nothing survives in the matter. Thus, my predecessor has observed that due to institution of the eviction proceeding and the subsequent developments, the original suit may not survive and the liberty was granted to the applicant i.e. defendant no.1 to move an application/ notice of motion to bring these facts to the notice of the learned Judge of City Civil Court.

4. I am informed by the learned counsel of defendant no.2 i.e. applicant in C.R.A. No. 620 of 2008 that defendant no.2 has filed the Notice of Motion No. 1143 of 2017 as observed by this Court.

5. Be that as it may, I have perused the plaint and the prayers made therein, so also the order passed by the learned Judge of the City Civil Court. The suit is for a declaration and injunction and cause of the Suit is an agreement between defendant nos. 1 and 2

and the developmental activities by defendant no.1. The issue in the Suit is not touching the business of the society and therefore, the notice under section 164 of the Maharashtra Co-operative Societies Act is not required, so also it cannot oust the jurisdiction of the Civil Court and it cannot be barred under section 91 A of the Maharashtra Co-operative Societies Act. The view taken by the learned Judge of City Civil Court regarding the jurisdiction is right. These orders are upheld and both the applications are hereby dismissed. The Notice of Motion which is filed by the applicant/ original defendant no. 1 is to be decided on merits independently.

(MRIDULA BHATKAR, J.)