

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.324 OF 2015
IN
NOTICE OF MOTION NO.3008 OF 2010
IN
SUIT NO.2678 OF 2010**

1 Ranjitsingh Linga	)	
2 Chhatrasingh M Malu	)	
both of Bombay Indian Inhabitant	)	
carrying on business in the firm	)	
name and style of M/s Air Cool	)	
unit No.1/C (also referred to Unit	)	
No.1/3 adm.976 sq.ft. at Dhiraj	)	
Pen Compound, Andheri Road,	)	
Bombay 400 059	)	..Appellants

Versus

1 Parwan Constructions Pvt Ltd.	)	
A Company incorporated under the	)	
Companies Act, 1956 having its	)	
registered office at A-40 Narayana	)	
Industrial Area, Phase-I	)	
New Delhi- 110 028	)	
 2 Jayshree Sanghvi	)	
607, 6th floor, Shrinath Tower	)	
Shankar Lane, Kandivali (w)	)	
Mumbai 400 067	)	..Respondents

**WITH
APPEAL (L) NO.555 OF 2015
IN
NOTICE OF MOTION NO.3008 OF 2010
IN
SUIT NO.2678 OF 2010**

Parwan Constructions Pvt Ltd.	)
A Company incorporated under the	)
Companies Act, 1956 having its	)

registered office at A-40 Narayana)
 Industrial Area, Phase-I)
 New Delhi- 110 028)

..Appellant
 (orig. Plaintiff)

Versus

1 Ranjitsingh Linga)

2 Chhatrasingh M Malu)
 both of Bombay Indian Inhabitant)
 carrying on business in the firm)
 name and style of M/s Air Cool)
 unit No.1/C (also referred to Unit)
 No.1/3 adm.976 sq.ft. at Dhiraj)
 Pen Compound, Andheri Road,)
 Bombay 400 059)

3 Jayshree Sanghvi)
 607, 6th floor, Shrinath Tower)
 Shankar Lane, Kandivali (w))
 Mumbai 400 067)

..Respondents
 (ori. Defendants)

Mr. Shishir Joshi a/w Ms Bhakti Jogal for the Appellants in Appeal No.324 of 2015 and for the Respondents in Appeal (L) No.555 of 2015

Mr. P. K. Dhakephalkar Senior Advocate a/w Mr. S.R. Bhalekar for the Respondents in Appeal No.324 of 2015 and for the Appellant in Appeal (L) No.555 of 2015

CORAM :R. M. SAVANT, &
 SARANG V KOTWAL, JJ

RESERVED ON: 9th NOVEMBER, 2017

PRONOUNCED ON : 28th NOVEMBER 2017

JUDGMENT (PER R.M.SAVANT J.)

1 The above Appeals challenge the order dated 8-4-2015 passed by the Learned Single Judge of this Court R.S. Dalvi J. (as Her Ladyship then was) by which order the Notice of Motion No.3008 of 2010 filed by the Plaintiff, came to be partly allowed.

2 The Appellants i.e. the original Defendant Nos.1 and 2 have filed the above Appeal No.324 of 2015 challenging the order dated 8-4-2015 by the Learned Single Judge in so far as it grants various reliefs to the Plaintiff and against them.

In so far as the Respondent No.1 i.e. the original Plaintiff is concerned, it had filed the above Appeal (L) No.555 of 2015 challenging the same impugned order in so far as it rejects their prayer for being permitted to construct the compound wall to the southern side of gala / unit 1C of the Defendant Nos.1 and 2. Hence the above Appeals are cross Appeals filed by the parties arising out of the impugned order dated 8-4-2015. The above Appeals are companion to Appeal Nos.303 of 2015 and (L) No.509 of 2015 between the same parties.

3 The facts necessary to be cited for adjudication of the above Appeals though already referred to in the companion Appeal would at the cost of repetition be once again referred to.

The Appellants herein are the original Defendant Nos.1 and 2 to the Suit in question. The said Suit has been filed by the Plaintiff i.e. the Respondent No.1 in the above Appeal. The property in question is plot No.A-1 bearing CTS No.34 admeasuring 64.2 sq.mtrs., CTS No.34/1 admeasuring 4254.5 sq.mtrs, CTS No.34/4 admeasuring 1343.4 sq.mtrs. of Village Chakala

and CTS No.183(c) admeasuring 233.1 sq.mtrs. of Village Mulgaon Taluka Andheri, the total land admeasuring 5895.2 sq.mtrs. On the said plot of land there are two sheds identified as Shed No.I and Shed No.II and one cabin admeasuring 83 sq.mtrs. attached to Shed No.II alongwith watchman's cabin and one electricity sub station which are also situated on the said property.

4 The original owner of the said property was one Muktaben Sanghvi. The Defendant No.3 one Jayshree Sanghvi was a tenant of the said Muktaben Sanghvi in respect of a gala being unit No.1C admeasuring 976 sq.ft. which was situated in the said Shed No.I. Originally there was a Tenancy Agreement between the said Muktaben Sanghvi and the said Jayshree Sanghvi which was dated 1-7-1985. The said Muktaben Sanghvi agreed to sell the said premises to the said Jayshree Sanghvi by agreement dated 14-7-1987. In view of the said Agreement to Sale executed in her favour, the said Jayshree Sanghvi continued as a prospective purchaser of the said gala /unit No.1C. By an unregistered Agreement for Sale dated 31-8-1992 entered into between the said Jayshree Sanghvi and the Defendant Nos.1 and 2, the said Jayshree Sanghvi agreed to sell the suit premises to them for consideration of Rs.4,21,000/-. By an Indenture of Conveyance dated 2-1-1997 registered with the Sub-Registrar of Assurances read with Deed of Rectification dated 4-2-1997, duly registered with the Sub Registrar of Assurance, the original owner i.e. the said Muktaben Sanghvi conveyed and transferred the said larger

property i.e. plot admeasuring 5895.2 sq.mtrs to one Mr. Rasik Kanakia (HUF) and Mr. Paresh H. Mehta. The said Kanakia and Mehta under registered Deed of Conveyance dated 31-10-2002 conveyed the said property to the present Plaintiff who thereupon became the owners of the said plot of land admeasuring 5895.2 sq.mtrs. It seems that the Defendant Nos.1 and 2 executed a Deed of Confirmation dated 11-10-2005 annexing the Agreement to Sale dated 31-8-1992 executed in their favour and registered the same on 10-11-2005. The Defendant Nos.1 and 2 thereby remained in occupation as prospective purchasers from the said Jayshree Sanghvi who herself was also a prospective purchaser having an Agreement to Sale executed in her favour by the said Muktaben Sanghvi. The said Muktaben Sanghvi had 12 different occupants including the said Jayshree Sanghvi in possession of the said Shed No.I by entering into different agreements. One of the occupants sub divided the Unit which was in his possession and transferred the same in favour of a third party. Thus on the date of the filing of the Suit there were 13 occupants including the Appellants i.e. the Defendant Nos.1 and 2, occupying different portions of the said Shed No.I which was situated on the larger plot of land i.e. land admeasuring 5895.2 sq.mtrs. In view of the fact that the Defendant Nos.1 and 2 and the other unit holders had carried out unauthorised additions within their units by constructing unauthorised floors without permission of the Municipal Corporation of Greater Mumbai (for short MCGM) as well as the landlord, the Plaintiff was constrained to file a Suit bearing No.1251 of 2007

in this Court for various reliefs against the Defendants in the said Suit who were the occupants of the said 13 units. It seems that on account of the correspondence which was entered into by the Plaintiff with the MCGM in respect of the unauthorised construction carried out by the said 13 unit holders which included the Defendant Nos.1 and 2, the MCGM had issued notice to the said 13 unit holders under Section 351 of the MMC Act which notices were dated 17-9-2008 alleging unauthorised construction carried out by the said 13 unit holders. The said unit holders filed their replies to the said notices and after consideration of the said replies the MCGM directed the said unit holders to remove / demolish the unauthorised construction by various orders passed by the Competent Authorities of the MCGM. The unit holders filed various Suits in the Bombay City Civil Court at Dindoshi challenging the said notices.

5 The Defendant Nos.1 and 2 with the other unit purchasers formed a proposed co-operative society and thereafter filed an application with the Deputy Registrar of Co-operative Societies "K" East Ward, Mumbai on 17-7-2009 for registration of the said society. On the Plaintiff coming to know about the said application being made by the Defendant Nos.1 and 2 and the other unit purchasers, the Plaintiff immediately approached the Deputy Registrar and filed two representations thereby objecting to the registration of the society and the principal objection was that the Defendant Nos.1 and 2 and

the other unit purchasers had no right to form a society as under the agreements the right is reserved to the landlord which in the instant case would be the original Plaintiff. The Deputy Registrar ultimately by order dated 15-9-2009 rejected the said application. The Plaintiff therefore filed the Suit in question for possession of the suit premises for breach and violation of the Agreement for Sale which was executed in favour of the unit purchasers.

6 In so far as the registration of the society is concerned, against the order passed by the Deputy Registrar Co-operative Societies rejecting the application for registration the unit holders which included the Defendant Nos.1 and 2 filed an Appeal challenging the said order. The Appeal also came to be dismissed by the Appellate Authority by order dated 14-10-2010. The unit holders thereafter filed a Review Application No.187 of 2011 before the State Government challenging the order passed by the Appellate Authority. The State Government allowed the said Revision by order dated 15-12-2010 which was passed by the then Hon'ble Minister for Co-operation, Government of Maharashtra on 27-9-2011. This resulted in the Plaintiff filing a Writ Petition in this Court being Writ Petition No.8329 of 2011. The said Writ Petition came to be admitted on 12-1-2012 and by way of interim reliefs this Court permitted the society to function and carry on its day to day activities, however restrained the society from exercising any further rights on the strength of the impugned order of registration.

7 The Plaintiff withdrew the said Suit No.1251 of 2007 filed by them on account of the formal defect with liberty to file a fresh Suit against the Defendant Nos.1 and 2 and the other unit holders. The Suit was accordingly allowed to be withdrawn with liberty as prayed for. It is post withdrawal of the Suit that the Plaintiff terminated the Agreement to Sale in favour of the Defendant Nos.1 and 2 on 13-7-2010. The said notice of termination was duly replied to by the Defendant Nos.1 and 2. The Plaintiff thereafter have filed the instant Suit being No.2678 of 2010 for the reliefs more particularly mentioned in the Suit. The Plaintiff had also filed 9 other Suits in this Court which have been transferred to the Bombay City Civil Court on the pecuniary jurisdiction of the Bombay City Civil Court being enhanced. The factum of the Defendant Nos.1 and 2 acting in breach and violation of the agreement have been more elaborately stated in the instant Suit. The relief sought is based on the same cause of action i.e. the Defendant Nos.1 and 2 acting in violation of Agreement to Sale by putting up construction without the permission of the MCGM and the landlord.

8 In the said Suit No.2678 of 2010 the Plaintiff filed Notice of Motion No.3008 of 2010 for interim reliefs. The interim reliefs sought were that the Defendant Nos.1 and 2 be restrained from transferring, alienating or encumbering or parting with possession of the suit premises or any part

thereof or carrying out any construction therein. The Plaintiff had also sought injunction restraining the Defendant Nos.1 and 2 from entering into the larger property or any part thereof and or in any event parking their vehicles in any part of the larger property including the recreation ground as shown in the plan annexed as Exhibit W. A further injunction was sought that the Defendant Nos.1 and 2 be restrained by an order of injunction from in any manner preventing the Plaintiff and/or all persons claiming through or under them from having a free access in the open spaces and from interfering with the Plaintiff constructing the compound wall and two gates and a security cabin. The Plaintiff lastly sought the appointment of the Court Receiver.

9 The said Notice of Motion was replied to on behalf of the Defendant Nos.1 and 2. The Defendant Nos.1 and 2 question the entitlement of the Plaintiff to the relief sought in the said Notice of Motion in the background of the document executed in their favour by the said Jayshree Sanghvi.

10 The Learned Single Judge considered the said Notice of Motion and by the impugned order dated 8-4-2015 has partly allowed the same by granting the reliefs which are mentioned in the operative part of the impugned order. The sum and substance of the reliefs is that the Defendant Nos.1 and 2 were enjoined from selling, alienating, encumbering, parting with possession

or creating third party rights in respect of gala / unit No.1C pending the Suit. The Defendant Nos.1 and 2 were also directed to park their vehicles in the space appurtenant to gala / unit No.1C so as to leave free access to all other gala / unit holders as also the Plaintiff. The Defendant Nos.1 and 2 were also directed to carry out loading and unloading of trucks in respect of their case outside gala / unit No.1C. The Defendant Nos.1 and 2 were restrained from entering into the larger property except for enjoying the open space between Shed Nos.I and II. The Defendant Nos.1 and 2 were also restrained from carrying out loading or unloading in the space between Shed Nos.I and II being used as amenity space. The Defendant Nos.1 and 2 were also restrained from preventing the Plaintiff and/or all persons claiming through the Plaintiff from having access to the open space in the larger property belonging to the said Muktaben Sanghvi and later to the Plaintiff.

11 At this stage, it would be relevant to refer to the impugned order passed by a Learned Single Judge. The Learned Single Judge as the impugned order discloses has referred to the antecedent facts of the said Muktaben Sanghvi entering into an Agreement to Sale dated 14-9-1987 in favour of the said Jayshree Sanghvi for which the consideration was the payment of 150 months rent. The said Jayshree Sanghvi thereafter created tenancy in favour of the Defendant Nos.1 and 2. Thereafter Agreement to Sale dated 31-8-1992 entered into between the said Jayshree Sanghvi and the Defendant Nos.1 and

2 to convert the tenancy of the Defendant Nos.1 and 2 in respect of the gala / unit No.1C. Thereafter the Defendant Nos.1 and 2 unilaterally executed the Confirmation Deed in respect of the said Agreement dated 31-8-1992. The Learned Single Judge has referred to the ownership rights of the Plaintiff in respect of the larger property being the area admeasuring 4664.60 sq.mtrs. whereas the Defendant Nos.1 and 2 at the highest had the rights only in respect of the gala / unit No.1C in question. The Learned Single Judge has compared the Agreement dated 14-9-1987 between the said Muktaben Sanghvi and the said Jayshree Sanghvi and the Agreement dated 31-8-1992 executed between the said Jayshree Sanghvi and the Defendant Nos.1 and 2 and on such consideration, the Learned Single Judge has come to a conclusion that the said Jayshree Sanghvi had sought to confer rights by an unregistered document which rights in respect of construction, consumption of FSI were not available to her under the Agreement dated 14-9-1987 executed by the said Muktaben Sanghvi in favour of the said Jayshree Sanghvi. The Learned Single Judge has therefore opined that the said Jayshree Sanghvi could not confer rights on the Defendant Nos.1 and 2 which she herself did not have. In juxtaposition the Learned Single Judge held that there could be no dispute about the fact that the Plaintiff was the owner of the larger property on which Shed No.I is situated. The Learned Single Judge has adverted to the requirement of earmarking the recreation ground and amenity space in the industrial zone as per the Development Control Regulations. On the

application of the Development Control Regulations, the Learned Single Judge has opined that the space between the two sheds i.e. Shed Nos.I and II was the amenity space and therefore the same could not be utilised for any other purpose. The Learned Single Judge has further recorded a finding that the unregistered Agreement entered into between the said Jayshree Sanghvi and the Defendant Nos.1 and 2 to convert their tenancy into the ownership rights is not an Agreement within the meaning of Section 4 of the MOFA and that the said Agreement was not entered into by Muktaben Sanghvi as a “promoter” under Section 4 of the MOFA. The Learned Single Judge has observed that the only intention of Muktaben Sanghvi was to construct units over the Shed No.I by utilising the available FSI on the plot of land which was owned by her. The Learned Single Judge therefore concluded that the said Jayshree Sanghvi and thereafter her successors i.e. the Defendant Nos.1 and 2 are not flat purchasers as contemplated under the MOFA. The Learned Single Judge therefore deemed it appropriate to grant the reliefs which have been granted and which are appearing in the operative part of the impugned order. In so far as the construction of the compound wall is concerned, the Learned Single Judge was of the view that the relief by way of permission to construct the compound wall was in nature of a mandatory order which the Learned Single Judge did not deem it appropriate to grant at the said stage. As indicated above, it is the said order dated 8-4-2015 which is taken exception to by way of the above Appeals.

12 Heard the Learned Counsel for the parties.

13 It was the submission of the Learned Counsel appearing on behalf of the Defendant Nos.1 and 2 i.e. the Appellants in Appeal No.324 of 2015 that the Learned Single Judge had erred in granting the restraint order and the injunction as granted by the impugned order. It was the submission of the Learned Counsel that as owners of gala / unit No.1C in Shed No.I, the Defendant Nos.1 and 2 were entitled to park their vehicles and were also entitled to use the open space which they have been doing all along. It was the submission of the Learned Counsel that since the ownership of the Defendant Nos.1 and 2 in respect of the gala / unit No.1C is not in dispute, the Defendant Nos.1 and 2 could not have been restrained or enjoined as sought to be done by the impugned order.

14 Per contra the Learned Senior Counsel appearing on behalf of the Appellant in Appeal (L) No.555 of 2015 and the original Plaintiff, would contend that the Plaintiff is entitled to put up the compound wall having regard to the fact that there was an existing wall which was removed in view of the fact that the land was to be made available to the MCGM. It was therefore the submission of the Learned Senior Counsel that the Plaintiff is entitled to put up the compound wall so as to secure its property which would

also result in securing the Shed No.I wherein the Defendants are occupying the gala / unit No.1C. It was therefore the submission of the Learned Senior Counsel that having regard to the facts and circumstances of the case, the order passed by the Learned Single Judge does not merit any interference in the Appellate Jurisdiction.

15 Having heard the Learned Counsel for the parties, we have considered the rival contentions. In the instant case, it is required to be noted that the Learned Single Judge has compared the Agreement to Sale executed by the said Muktaben Sanghvi on 14-9-1987 in favour of the said Jayshree Sanghvi and the unregistered agreement dated 31-8-1992 entered into between the said Jayshree Sanghvi and the Defendant Nos.1 and 2. On such consideration the Learned Single Judge has held that the said Jayshree Sanghvi by the unregistered Agreement dated 31-8-1992 has conferred rights on the Defendant Nos.1 and 2 which were not vested in her. Whilst doing so, the Learned Single Judge has observed that the Defendant Nos.1 and 2 claim right to the entire property under the said unregistered Agreement dated 31-8-1992 when the said Jayshree Sanghvi had a right only in respect of the gala / unit No.1C, which was initially tenanted to her. The Learned Single Judge has further observed that though Muktaben Sanghvi had agreed to transfer, sell and assign to the said Jayshree Sanghvi the gala / unit No. 1C admeasuring 976 sq.ft., the said Jayshree Sanghvi had sought to confer on the Defendant

Nos.1 and 2 a right over the entire property which in fact the said Jayshree Sanghvi did not possess as Muktaben Sanghvi did not agree to grant transfer, sell or assign to the said Jayshree Sanghvi the entire property admeasuring 4664.60 sq.mtrs. The Learned Single Judge has also observed that the Defendant Nos.1 and 2 could not claim any right of construction except the construction of toilet within their premises i.e. gala /unit No.1C as the said Jayshree Sanghvi had no right to construct anything in the property described in the schedule of the Agreement. The Learned Single Judge has further adverted to the Agreement between Muktaben Sanghvi and the said Jayshree Sanghvi under which Muktaben Sanghvi would continue to have ownership right over the entire property other than gala / unit No.1C. The Learned Single Judge has further observed that under the said unregistered Agreement dated 31-8-1992, the said Jayshree Sanghvi claimed to be the sole and exclusive owner of the property described in the schedule and the sheds standing thereon when the said Muktaben Sanghvi was infact never conveyed this property by the said Agreement dated 14-9-1987. The Learned Single Judge has also adverted to the fact that it was the right of Muktaben Sanghvi under the said Agreement dated 14-9-1987 to use the available FSI which was not given to the said Jayshree Sanghvi under the Agreement dated 14-9-1987. On such consideration the Learned Single Judge reached a conclusion that the Defendant Nos.1 and 2 can have ownership rights only in respect of the said gala / unit No.1C and they therefore could not have rights in respect of any

part of Muktaben Sanghvi's property consisting of two sheds and open space under CTS Nos.183 and 34 admeasuring 4664.60 sq.mtrs.

16 In so far as the applicability of the provisions of MOFA is concerned, the Learned Single Judge has observed that Muktaben Sanghvi was interested in developing her own plot of land by using the balance FSI available thereon and had agreed to make the said Jayshree Sanghvi a member of the society to be formed by her upon such development and construction and to transfer and convey the entire plot to such society. The Learned Single Judge further observed that such development and construction was to be carried out only by Muktaben Sanghvi and that the said Jayshree Sanghvi had no right in such construction or development. The Learned Single Judge has observed that the occasion to form the co-operative society and convey the plot of land to the said society never materialised till filing of the Suit. The Learned Judge has therefore observed that the Agreement to convert the tenancy rights into the ownership rights cannot be said to be an Agreement covered by Section 4 of the MOFA. The Learned Single Judge in the said context observed that the said Agreement was not executed by a developer as a promoter under Section 4 of the MOFA. The Learned Single Judge therefore observed that the said Jayshree Sanghvi and thereafter the Defendant Nos.1 and 2 are not flat purchasers as contemplated under MOFA. As indicated above the Learned Single Judge has thereafter

referred to the Development Control Regulations which are applicable to an industrial zone and has therefore observed that a part of the said plot of land is required to be earmarked as RG and also the space between the Shed Nos. I and II is the amenity space which is required to be kept in terms of the said Development Control Regulations. It is after recording the findings as above, the Learned Single Judge has deemed it appropriate to grant the restraint order as well as injunction against the Defendant Nos.1 and 2 which is appearing in the operative part of the impugned order. In our view, having regard to the facts as aforestated which disclose that the Defendant Nos.1 and 2 can only have a right in respect of the said gala / unit No.1C, the grant of the restraint order and injunction by the Learned Single Judge to the extent granted cannot be faulted with.

17 In so far as the Appeal (L) No.555 of 2015 is concerned, as indicated above, the said Appeal has been filed challenging the impugned order in so far as it rejects the prayer for construction of the compound wall. Though the compound wall was existing and has been demolished pursuant to the set back area which was to be handed over to the MCGM , in our view the Learned Single Judge was right in rejecting the said relief on the ground that the same would amount to granting a mandatory order to the Plaintiff at the interim stage.

18 In our view, apart from the grounds which are mentioned in the impugned order for rejecting the said relief. The rejection also can be justified on the ground that the same would create practical difficulties for the parties at the interim stage more so having regard to the fact that the Plaintiff has filed the Suit against all the occupants of the units in Shed No.I. In our view, therefore, the order rejecting the prayer for construction of compound wall also cannot be faulted with. Hence there is no merit in the above Appeals which to accordingly stand dismissed.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]