

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4424 OF 2017

Geeta Eknath Gharat	 Petitioner
V/s.	
Maghnani Developers, Navi Mumbai, & Ors.	 Respondents

Mr. Anoop Sharma, a/w. Mr. Arun Nile, i/by Mr. Ghanashyam Tripathi,
for the Petitioner.

Mr. Rajesh Sudhakar Datar for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

P.C. :

1. Heard Mr. Sharma, learned counsel for the Petitioner, and
Mr. Datar, learned counsel for Respondent No.1.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 22nd March 2017 passed by the District Judge-4, Alibag, Raigad, thereby allowing Miscellaneous Civil Appeal No.52 of 2016, which was preferred against the order dated 9th February 2016 passed by the Civil Judge, Senior Division, Panvel, below the application "Exhibit-5" in Special Civil Suit No.339 of 2015.

3. The facts of the present case are to the effect that, the Petitioner herein is the sister of Respondent Nos.4/2 and 4/3 and the daughter of Respondent No.4/1. Thus, she is having 1/16th share in the suit property. However, according to her, keeping her in dark, Respondent Nos.2, 3, 4 and 5 had executed an 'Agreement of Sale' in respect of the suit property in favour of Pradeep Kumar Agrawal and Ashok Shrichand Harchandani on 12th January 2004. Thereafter, they had also executed the 'Memorandum of Understanding' in favour of M/s. Rajesh Developers on 28th February 2004. M/s. Rajesh Developers had then filed Civil Suit No.76 of 2008 before the Court of Civil Judge, Junior Division, Panvel, for enforcement of 'Memorandum of Understanding' i.e. for specific performance of the contract. According to the Petitioner, she was not made party to that Suit also.

4. It is her case that, thereafter, Respondent Nos.2 and 3 and heirs of Respondent Nos.4 and 5 entered into an 'Agreement of Lease' with the City and Industrial Development Corporation (*CIDCO*) on 19th March 2008. However, Petitioner's right was willfully suppressed in the said 'Agreement to Lease' also, but, possession of the suit property was handed over on the same day i.e. 19th March 2008. Thereafter, on 24th February 2010, 'Compromise Deed' was entered and effected between Respondent Nos.2 and 3 and legal heirs of Respondent Nos.4 and 5 in

Regular Civil Suit No.76 of 2008 and it came to be decreed in favour of Respondent No.1. At that time also, the Petitioner was not made party. Then, on 14th September 2010, Respondent No.1 has filed Darkhast Proceeding No.58 of 2010, without Petitioner being made party to the same. In that Darkhast Proceeding, the 'Court Commissioner' was appointed on 19th April 2011. Thereafter, on 2nd July 2012, 'Tripartite Agreement' came to be executed with CIDCO, through the Court Commissioner, in favour of Respondent No.1, to which the Petitioner was not party. Then, Pradeep Kumar Agrawal and Ashok Shrichand Harchandani had filed Regular Civil Suit No.321 of 2015 for declaration that the 'Agreement of Sale' dated 12th January 2014 is legal, valid and subsisting.

5. On 18th May 2015, the Petitioner came to know about all these earlier developments, when she got reply, under the Right to Information Act, from the CIDCO. Therefore, on 25th June 2015, Petitioner issued notice to the Respondents asserting her rights in the suit plot and then filed Special Civil Suit No.339 of 2015 for partition of her 1/16th share therein and for declaration that this 'Lease Agreement' and 'Tripartite Agreement' are null and void.

6. Further, on 11th September 2015, the Petitioner also filed Vakalatnama in Civil Suit No.321 of 2015, along with Respondent Nos.2

to 5, in the Suit filed by Pradeep Kumar Agrawal and Ashok Shrichand Harchandani. She also filed the application in Civil Inquiry No.590 of 2015, declaring that the 'Heirship Certificate' produced in Civil Inquiry No.569 of 2006 is illegal, null and void, as she was not made party thereto. At the same time, Civil Enquiry No.379 of 2015 was also filed by Respondent No.3 for setting aside the 'Heirship Certificate'. On 17th October 2016, Respondent Nos.2 and 3 and heirs of Respondent Nos.4 and 5 had filed Regular Civil Suit No.795 of 2016 for declaration that, the 'Compromise Deed' effected in Darkhast Proceeding No.58 of 2010 of Suit No.76 of 2008, is not binding.

7. In the backdrop of these facts, the Petitioner has filed an application for interim injunction at "Exhibit-5" in Special Civil Suit No.339 of 2015, restraining Respondent No.1-the Developer from carrying out any construction over the suit property till the decision of the Suit.

8. This application came to be resisted by Respondent No.1 and the Trial Court has, after considering the material on record, allowed the said application. When Respondent No.1 herein has challenged the said order before the Appellate Court, the Appellate Court has set it aside and rejected the application at "Exhibit-5" filed by the Petitioner.

9. Being aggrieved thereby, this Writ Petition is preferred. The submission of learned counsel for the Petitioner is that, the Trial Court and the Appellate Court, both, had consistently held that, the Petitioner is having 1/16th share in the suit property. The record also shows that, all these earlier transactions relating to the suit property have been entered into behind her back and without her knowledge, as she was not party to any of these transactions. In such situation, according to learned counsel for the Petitioner, the Trial Court has rightly granted the relief of interim injunction, restraining Respondent No.1-the Developer from carrying out further construction over the suit property. Therefore, when the Trial Court has exercised its discretion to grant such relief of interim injunction, the Appellate Court should not have interfered in the said discretion. In support of this submission, learned counsel for the Petitioner has placed reliance on the decision of the Apex Court in the case of *Skyline Education Institute (India) Private Limited Vs. S.L. Vaswani and Anr.*, 2010 (2) ALL MR 427.

10. Further, according to the submission of learned counsel for the Petitioner, no such irreparable loss or hardship is going to be caused to Respondent No.1-the Developer, if he is restrained from carrying out further construction, as, admittedly, at present also, the suit plot is lying vacant and no construction is undertaken thereon. Therefore, according to him, the interest of justice requires that, the statusquo of the suit

property should remain as it is, instead of allowing the same to be changed, so that the Petitioner can exercise her right of partition of 1/16th share in the suit property.

11. To substantiate this submission, learned counsel for the Petitioner has placed reliance on the Judgment of the Apex Court in the case of *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, 2005 (5) ALL MR (S.C.) 3*, wherein it was held that,

“Unless and until a case of irreparable loss or damage is made out by a party to the Suit, the Court should not permit the nature of the property being changed, which also includes alienation or transfer of the property, which may lead to loss or damage being caused to the party, who may ultimately succeed and may further lead to multiplicity of proceedings.”

12. Per contra, learned counsel for Respondent No.1-the Developer has supported the order passed by the Appellate Court by submitting that, Respondent No.1 has already created third party interests in the suit property long back. The Petitioner was very much aware about all these transactions, which had taken place earlier. She has allowed those transactions to take place and only at the instance of other Respondents, she has filed this collusive Suit, just to coerce Respondent No.1 to pay some more amount. It is submitted that, in the Suit, bearing Regular Civil Suit No.795 of 2016, she has filed Vakalatnama along with the

other Respondents, i.e. Respondent Nos.2 and 3 and legal heirs of Respondent Nos.4 and 5. Hence, in the face of such a collusive Suit, if the order of interim injunction is granted, restraining Respondent No.1-Developer from carrying out construction activity on the suit plot, Respondent No.1 will suffer irreparable loss and damage. It is urged that, no such relief of interim injunction needs to be granted, especially when Respondent No.1 is ready to protect the interest of the Petitioner to the extent of her 1/16th share in the suit property.

13. I have given my thoughtful consideration to the submissions advanced at bar by learned counsel for both the parties. It is true that, as held by the Trial Court and the Appellate Court, the Petitioner is, admittedly, having 1/16th share in the suit property. It may be true that, to all the earlier transactions in respect of the suit property, Petitioner was not made a party, but, then the fact remains that those transactions had taken place from the year 2004 onwards; hence, it becomes difficult to accept that the Petitioner was not at all aware about those transactions; especially, even of the 'Heirship Certificate' and other proceedings filed in respect thereof. Now at the fag-end, when Respondent No.1-Developer is undertaking the construction activity, after creating third party interests in the suit property, she has filed this Suit and application for interim injunction. Therefore, the application for interim injunction and the Suit definitely suffer from delay and latches.

The possibility of this Suit being a collusive Suit with other Respondents also cannot be ruled out in the facts of the present case, when Petitioner has joint Vakalatnama along with the other Respondents in Civil Suit No.321 of 2015.

14. Moreover, to allow her application is, as good as restraining the entire construction activity over the suit property, that too, only to protect 1/16th share of the Petitioner in the suit property and when Respondent No.1-Developer is undertaking to protect her interest to the extent of her 1/16th share in the suit property. Therefore, it would not be just and proper to allow such application of the Petitioner. Conversely, it would be the abuse of the process of the law, if she is allowed to hold Respondent No.1-Developer at ransom and not permitting him to carry out construction activity during the pendency of the Suit, which is likely to take substantial time. Respondent No.1 will suffer more hardship and loss, if the relief of interim injunction is granted than the Petitioner, whose interests, Respondent No.1 has undertaken to protect.

15. Learned counsel for Respondent No.1-Developer, on instructions of Mr. Mukesh Lakhani, appearing on behalf of Respondent No.1-Meghnani Developers, who is present in the Court, submits that, Respondent No.1 is ready to protect the interest of the Petitioner by reserving two flats, having the area of 700 sq.ft. each, till the decision of the Suit. In my

considered opinion, this fair proposal will definitely protect the interest of the Petitioner to the extent of her 1/16th share in the suit property. Therefore, no reason is made out to interfere in the impugned order passed by the Appellate Court, as now the interest of the Petitioner is also being protected by this fair proposal. Accordingly, this statement of Respondent No.1 is treated as 'undertaking' given to this Court.

16. Therefore, the Writ Petition stands dismissed.

17. Learned counsel for the Petitioner, at this stage, seeks extension of the order of status-quo passed by the Appellate Court on 22nd March 2017, which is continued till today, for a further period of eight weeks, in order to enable the Petitioner to approach the Hon'ble Supreme Court against the order of this Court.

18. Learned counsel for Respondent No.1-Developer strongly resists the said prayer. However, considering that the order of status-quo is in existence till today, in order to enable the Petitioner to approach the Hon'ble Supreme Court, the said order of status-quo is extended for a period of eight weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]