

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9527 OF 2013

M/s. Gautam Dhara Cooperative Housing
Society Ltd. through Designated Members ... Petitioners

Vs.

Prabhakar Ramkrishna Khambete & Ors. ... Respondents

Mr. Chintan Shah a/w. Mr. Sandesh D. Patil, Advocate for the
petitioners.

Mr. Jayesh M. Joshi, Advocate for respondent nos. 1 to 3.

Ms. Gauri Velankar i/b. Mr. Mandar Limaye, Advocate for respondent
no. 8.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 12th June, 2018.

P.C.:

The learned counsel for respondent nos. 1 to 3 and the learned
counsel for respondent no. 8 is present. Though served, none
present for the other respondents.

2. This Writ Petition is directed against the order dated 20th
August, 2013 passed by the 3rd Joint Civil Judge Senior Division,
Thane below Exhibit 119 in Regular Civil Suit No. 635 of 2007. The
petitioner is the original plaintiff-Society, who have filed the suit for
specific performance under MOFA. The main prayer of the plaintiff-

society is that defendant nos. 1 to 3/land owners and defendant no. 9 are to be ordered to execute the conveyance in favour of the society. Earlier, the said suit was framed by the trial Court and the evidence was tendered by both the parties. Arguments were heard and thereafter the trial Court recast the issues on 8th August, 2013. The plaintiff thereafter moved an Application Exhibit 119 on 20th August, 2013 requesting the Court to keep issue no. 1 as it is. It was regarding the direction to be given to defendant nos. 1 to 3 and 9 to execute Deed of Conveyance in favour of the society. However, the trial Court while rejecting the Application has observed that fresh issue no. 5 is the same issue only worded differently. Hence, this Writ Petition.

3. Heard the submissions. Recast issue no. 5 dated 8th August, 2013 is as follows:

“Whether the plaintiff is entitled for mandatory injunction as prayed.”

4. While answering this issue, the learned Judge will have to discuss the evidence pertaining to the right of the plaintiff and also the obligation of the defendants to execute the Deed of Conveyance.

Under such circumstances, no interference is required in the impugned order. Hence, the Writ Petition is dismissed.

5. The trial Court to take note that the evidence is already over and arguments were heard in 2013, so the trial Court will hear the arguments and parties shall re-argue the matter and the suit is to be decided on or before 31st July, 2018. Parties shall appear before the trial Court on 21st June, 2018. Parties to cooperate.

(MRIDULA BHATKAR, J.)