

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.202/2016
IN
FIRST APPEAL NO.95/2016

Ravi Joshi Associates & Ors. ... Applicants
V/s.
Sahakar Kalyan Nidhi & Ors. ... Respondents

Mr. Sandip Phatak for the Applicant
Mr. S. S. Kanetkar for the Respondent No.1.

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : AUGUST 8, 2018

P.C. :

1 Heard. By this Civil Application, the Applicant Plaintiff seeks an order of injunction restraining the Respondents from entering into any transaction or arrangement or understanding in respect of the suit property i.e. Sy.No.371(A)(Part), Hissa No.1,2,3,4,5/2 that is City Survey No.17-2/C correspondeing Final Plot No.289, Koregaon Park, Village Ghorpadi, Taluka Haveli, District Pune, till the hearing and final disposal of the First Appeal.

2 In the present proceedings, the Applicant Plaintiff had instituted Special Civil Suit No.203/2002 in the court of the Civil Judge, Senior Division Pune for declaration, cancellation, specific performance, damages, injunction and other reliefs. In that suit, the Applicant has made following prayers.

Basavraj G. Patil

1/6

“(a) It be declared that the letter dated 2.8.2001 and Notice cum reply dated 21.1.2001 issued by and relied upon by the Defendants is/are illegal, null and void and the same may kindly cancelled.

(b) The Defendants may kindly be directed to perform specifically, the terms and conditions of the agreement dated 29/5/2001, which is captioned as Memorandum of Understanding executed by the Defendants in the name of Plaintiff No.2 in respect of the suit property.

(c) In the alternative to the prayer clauses (b) above, and if this Hon'ble Court comes to conclusion that the said prayer cannot be granted for an reason whatsoever then in that case the Defendants may kindly be directed to pay to the Plaintiffs an amount of Rs.3,57,00,000/- (Rupees three crores fifty seven lakhs only) along with interest at the rate of 24% p.a. from 21.01.2001 till realisation.

(d) In the alternative to the prayer clauses (b) and (c) above, and if this Hon'ble Court comes to the conclusion that the said prayer cannot be granted for any reason whatsoever then in that case the Defendants may kindly be directed to pay to the Plaintiffs an amount of Rs.1,27,00,000/- (Rupees one crores twenty seven lakhs only) along with interest at the rate of 24% p.a. from 21.01.2001 till realisation.

(e) The Defendants may kindly be restrained by decree of permanent injunction from entering into any transaction or agreement or understanding in respect of the suit property or any part thereof, at any time either personally or through their agents, servants, assigns etc.

(f) The Defendants may kindly be restrained by decree of permanent injunction from delivering or parting with possession of the suit property or any part thereof, at any time either personally or through their agents, servants, assigns etc.

(g) The Defendants may kindly be restrained by decree of permanent injunction from causing or allowing anybody to cause any development activity including any construction, digging or

any other work in the suit property or any part thereof, at any time either personally or through their agents, servants, assigns etc.

(h) Interim reliefs in terms of prayer clause (e) to (g) above may kindly be granted.

(i)

(j)”

3 The Trial Court passed the impugned judgment and decree dated 21.10.2015 dismissing the Plaintiffs suit and directed them to pay sum of Rs.3000/- by way of compensatory costs. In that suit the Trial Court has framed following issues:

	ISSUES	FINDINGS
1	Whether Plaintiffs prove that Defendant Nos.1 to 7 entrusted development rights of suit property to the Plaintiffs under agreement dated 29.05.2001 ?	In the negative
2	Whether Plaintiffs prove that Defendant Nos.1 to 7 committed breach of contract and failed to perform their part of contract ?	In the negative
3	Whether Plaintiffs prove that Defendants illegally terminated contract dated 29.05.2001 as alleged ?	In the negative
4	Whether Plaintiffs prove that they are ready and willing to perform their part of contract ?	In the negative
5	Whether Defendant No.8 proves that Defendant Nos.1 to 8 collectively decided to develop the suit property ?	In the affirmative
6	Whether Defendant No.8 proves that agreement dated 29.05.2001 entered into between Plaintiffs and Defendant Nos.1 to 7 not binding on it?	In the affirmative

7	Whether suit is bad for non-joinder of necessary parties ?	In the negative
8	Whether suit is hit for want of notice U/s.164 of the Maharashtra Cooperative Societies Act, 1960?	In the affirmative
9	Whether suit is hit for want of compliance of Sec.50 of the Bombay Public Trust Act ?	In the negative
10	Are Plaintiffs entitled for relief of specific performance of contract as sought for ?	In the negative
11	Are Plaintiffs entitled for alternative relief of recovery of Rs.3,57,00,000/- with interest thereon?	In the negative
12	Are Plaintiffs entitled for relief of permanent injunction as sought for ?	In the negative
13	Are Plaintiffs entitled for alternate relief of Rs.1,27,00,000/- within interest as sought for ?	In the negative
14	Is Defendant No.8 entitled for compensatory costs as sought for ?	In the affirmative
15	What order and decree?	Suit is dismissed with costs.

4 The learned counsel for the Applicant submits that in the said suit, initially they had made an Application below Exhibit-5 for injunction restraining the Respondent - Defendant from entering into any transaction and/or agreement in respect of the suit property. He submits that the said Application was decided by Trial Court by order dated 14.08.2002. By that order, the Trial Court has restrained the Respondent by way of temporary injunction entering into any transaction, agreement, understanding in respect of the suit property till pendency of the suit. Operative part of the said order reads thus:

“ORDER

(i) *Application is allowed.*

(ii) *Defendants are temporarily restrained from entering into any transaction, agreement, understanding in respect of the suit property, themselves or through anybody else on their behalf, and from parting with possession of it or any part of it, accordingly, till the pendency of this suit.*

(iii) *Costs shall be costs in cause.”*

5 The learned counsel for the Applicant submits that from the Affidavit-in-Reply filed by the Respondent Trust, it is crystal clear that they are going to develop this property either for their own aims and objects of the Trust and/or their staff. He submits that once the property is developed, nothing will survive in the present appeal. Hence, pending the hearing and final disposal of the present First Appeal, the Respondent Trust may be restrained by an order of injunction from creating any third party right, title and interest. In support of this, they also rely upon the averments made in the Civil Application.

6 On the other hand, the learned counsel for Respondent No.1 submits that in view of the subsequent development, nothing survives in the Civil Application. He submits that in view of dismissal of the Special Civil Suit No.203/2002, Respondent No.1 has decided to develop the said property at their own that too for their members and officers only. He submits that Respondent No.1 Trust, after carefully going through all the relevant documents and after their detailed scrutiny and discussion, has decided that the area admeasuring 63174 sq.ft. shall not be transferred to Respondent No.8 Society by way of

lease deed. Therefore, there is no question of granting any relief in favour of the Applicant. Apart from that, as on today, the suit filed by the Applicant stood dismissed on merits.

7 Heard both sides. It is to be noted that in the present proceedings, as on today, the suit filed by the Plaintiff Applicant stood dismissed.

8 During the course of arguments, when this court had called upon the advocate for the Applicant to take instructions from his client, as to whether they are ready and willing to deposit market value of the suit property in the Registry of this court by way of surety, he submits that it is not possible for them to do so. It is to be noted that it is crystal clear from the prayer clauses of the suit filed by the Applicant that in the alternative their case is for damages also.

9 Considering these facts and subsequent development as stated by Respondent No.1 in their Affidavit-in-Reply, we do not find any reason to restrain the Respondent Trust from developing this property for their own aims and objects and for the benefit of the Trust staff. In any case, if the Applicants succeed, they may insist for damages, as claimed in the suit.

10 Hence, the Civil Application stands rejected. No order as to costs.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)