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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 456 OF 2017
IN
NOTICE OF MOTION No. 2134 OF 2011
IN
SUIT No. 1680 OF 2011

Abdul Razak Sattar Chunawalla & Ors. ... Appellants
Vs.
Rockline Developers Private Ltd. ... Respondent

Mr. Rajiv Kumar, Sr. Advocate a/w Mr. Swapnil Bangur i/b
Yatin R. Shah, for the Appellants.

Mr. Simil Purohit i/b Tejas D. Shah, for the Respondent .

CORAM : NARESH H. PATIL &
V. M. DESHPANDE, J.

DATE : JUNE 29, 2018

PC :-

1. The present appeal is filed by the defendants. Parties to this appeal will be referred to by their original position. This appeal challenges the order dated 18th July, 2017 passed by the learned Single Judge, by which the learned Judge ruled that plaintiff has made out prima-facie case for confirmation of ad-interim order, as per the finding recorded by the learned Single

Judge. The balance of convenience also weights in favour of the plaintiff. Accordingly, by order dated 18th July, 2017, he confirmed the ad-interim order granted on 25th August, 2011 and modified by the appeal court on 14th September, 2011 during pendency of the suit.

2. One Byramjee Jeejeebhoy Pvt. Ltd. was owner of the entire property. The said Byramjee Jeejeebhoy Pvt. Ltd. entered into an agreement for sale on 3rd March, 1972 and thereby agreed to sell the said entire property in favour of late Sattar Ahmed Chunawlla, father of the defendants on “as is where is” basis. Plaintiff further states that certain disputes relating to entire property arose in between the parties, resulting into filing of the Suit No. 268 of 1976 by Byramjee Jeejeebhoy Pvt. Ltd. before this Court. During pendency of this suit, late Sattar Ahmed Chunawalla entered into agreement for development cum sale with the plaintiff in respect of entire property on “as is where is” basis. Late Sattar Chunawala also executed a memorandum of possession dated 23rd April, 1990, by which plaintiff was put in actual physical possession of the said entire property.

3. Suit No. 268 of 1976 was compromised by consent decree dated 9th April, 1990 and under the said decree, plaintiff in the said suit conveyed all their right, title and interest in favour of late Sattar Ahmed Chunawalla.

4. After the said late Sattar Chunawalla by further writing dated 6th August, 1993 executed in favour of the plaintiff and recorded that in view of the consent terms, he has become sole and absolute owner of the entire property entrusted to the plaintiff for development and thereby perfected the title.

5. After the death of Sattar Ahmed Chunawala, his widow Zubeda (since deceased) and the defendant Nos. 2 and 3 as his legal heirs, they executed a further agreement dated 18th May, 2001, thereby confirming the rights in favour of the plaintiff as the sole and exclusive owner of the entire property. The other developments that took place between the parties need not be elaborated herein since those are part and parcel of the plaint and elaborating them in the present order will only be unnecessary repetition and the order will be bulky..

6. Be that as it may, in our view, learned Single Judge prima-facie correctly reached to a conclusion that what was sold by the defendants to the plaintiff was not merely land admeasuring 18609.23 Sq. mtrs. of land described in the schedule of conveyance, but the entire property which is shown delineated on the plan annexed to conveyance, and boundaries of which are stipulated in the conveyance.

7. After hearing the learned counsel for the parties, we are of the view that since the order passed by the learned Single Judge is operating since 18th July, 2017, it needs no interference the interest of justice can be met by granting liberty to the parties to approach the learned Single Judge with a request for expeditious trial. We, however, make it clear that while deciding the suit on its own merits, the observations made in the impugned order shall not influence the outcome of the trial. With this appeal is disposed of.

Sd/-

[V. M. DESHPANDE, J.]

Vinayak Halemath

Sd/-

[NARESH H. PATIL, J.]