

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1422 OF 2018
IN
FIRST APPEAL NO. 440 OF 2018**

Dr. H. Samant and ors.	Applicants/Appellants
V/s.	
Chogle Dham Co-operative Housing Society Ltd. and ors.	Respondents

Mr. Prakash G. Lad for a/w. Ms. Sayali Apte for the
applicants/appellants.
Mr. Nikunj Mehta, Mr. Benny Joseph, Mr. Aniruddha Lad,
Ms. Pallavi Kamath i/b. B.J. Law Offices LLP for respondent no.1.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 13th AUGUST, 2019**

P.C.:-

. By this application, the applicants have sought to stay execution, implementation and operation of the impugned judgment and decree dated 30/11/2017 passed by the Ad-hoc District Judge, City Civil & Sessions Court, Greater Bombay in Suit No.7728 of 1998.

2. By the impugned judgment and decree, the City Civil Court, Bombay has directed the applicants who are the defendant nos.1, 2(a) and 2(b) in the suit and respondent nos.1 to 5 to execute a Deed of Conveyance in favour of respondent no.1-Society.

3. It is not in dispute that the suit property was originally owned by Mr. Balkrishna Chogle. Said Balkrishna Chogle had entered into an Agreement dated 17/03/1980 whereby he permitted the respondent no.3-Builder for vertical extension of the old building. Clause 12 of the Agreement prima facie indicates that the original owner had permitted the respondent no.3-Builder to sell the flats / shops, garages, etc. to the proposed purchasers on absolute ownership basis. Clause 19 of the Agreement also stipulates that the original owner would execute a Deed of Conveyance in favour of the proposed purchasers or in favour of the Co-operative Society.

4. It is also not in dispute that pursuant to the said agreement dated 17/03/1980, the respondent no.3 has carried out the construction and sold the flats to the purchasers who have formed a Co-operative Society. The said flat purchasers who are the members of the respondent no.1-Plaintiff Society, have been put in possession of their respective flats and they are occupying the flats since the year 1989. A perusal of the agreement between the respondent no.3 and the purchasers who are the members of the Society prima facie indicate that the purchasers had entered into an agreement relying upon the representation made by the original owner - Mr. Balkrishna Chogle

that he would execute conveyance in favour of proposed purchasers or Co-operative Housing Society. A plain reading of both these agreements would prima facie show that all the parties i.e., the original owner - Mr. Balkrishna Chogle, respondent no.3 and the proposed flat purchasers were ad-idem and clearly understood that the original owner Mr. Chogle had to execute a deed of conveyance in favour of the purchasers or the Co-operative Society.

5. The agreement between the flat purchasers and the respondent no.3 also stipulates formation of Co-operative Housing Society and requires the respondent no.3 to execute a Deed of Conveyance in favour of the Co-operative Housing Society. The records indicate that said Balkrishna Chogle had expired on 07/10/1982. The letter dated 18/05/1997 which was addressed to the Secretary of the Society by the wife of the appellant no.1 and the daughter of the Balkrishna Chogle prima facie reveals that the Conveyance Deed was not executed because of the inter se dispute between the heirs of Balkrishna Chogle. In reply to the letter dated 07/04/1986 addressed by the respondent no.1-Society, the respondent no.3 had expressed his inability to execute a Deed of Conveyance in view of the non co-operation of the appellants who are the heirs of the original owner - Balkrishna Chogle.

6. Mr. P.G. Lad, the learned counsel for the appellant contends that the construction is unauthorized and illegal and further that the respondent no.3 has not complied with the contractual obligation. He submits that out of Rs.2,25,000/-, the respondent no.3 has not paid Rs.1,79,000/-. It is to be noted that the Trial Court has already recorded a finding that neither Mr. Balkrishna Chogle nor his representatives had issued any notice to the respondent no.3 alleging breach of terms and conditions of the agreement or calling upon them to comply with the contractual obligation. The Trial Court has also observed that it is within the domain of Bombay Municipal Corporation to decide the issue of legality / illegality of the construction and that the heirs of Mr. Balkrishna Chogle cannot avoid execution of Deed of Conveyance on such plea. It is also to be noted that the appellants herein had already filed the suit against the BMC and the plaintiff-society alleging that the construction is unauthorized. The said suit was dismissed for default on 01/12/2007 and is not yet restored. Under the circumstances, the heirs of Balkrishna Chogle, who are otherwise bound by the terms of the Agreement dated 17/03/1980, prima facie cannot avoid execution of the Deed of Conveyance.

7. As stated earlier, the purchasers who are the members of the

Society have purchased the flats in view of the representation that Mr. Balkrishna Chogle would execute a Deed of Conveyance either in their favour or in favour of Co-operative Housing Society. These purchasers are in possession of the respective flats since more than two decades. These purchasers who have formed the Co-operative Housing Society cannot be denied the contractual right of the conveyance because of the inter se dispute between the heirs. Furthermore, non execution of conveyance would also deprive the individual purchasers from selling their flats. The learned counsel for the respondent no.1-Society states that the respondent no.1-Society / members in case of individual sale, shall incorporate a clause in the Deed of Conveyance stipulating that execution of the Deed of Conveyance shall be subject to the final outcome of the appeal. Such a clause will safeguard the interest of the appellant. Statement is accepted.

8. Under the circumstances and in view of discussion supra, no case is made out for interim relief. Civil Application stands dismissed.

Preeti
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Jayani

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Preeti H.
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(SMT. ANUJA PRABHUDESSAI, J.)