

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

**APPEAL FROM ORDER NO.90 OF 2016
WITH
CIVIL APPLICATION NO.119 OF 2016
IN
APPEAL FROM ORDER NO.90 OF 2016**

Smt. Shakubai Baban Tapkir through her power of attorney Yogesh Balasaheb kakade	...Appellant
Versus	
M/s. Spectrum Realty through its partners (A) Sachin Rikhablal Bhandari and Ors.	...Respondents
.....	
Mr. Sandeep M. Phatak for the Appellant.	
None for the Respondents.	

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE: 26th FEBRUARY, 2019.

P.C.:-

The Appellant herein has challenged the order dated 15/9/2015 whereby the learned Civil Judge, Senior Division, Pune has dismissed the application for injunction filed in Civil Suit No.1542 of 2014.

2. Heard Mr. Sandeep Pathak, the learned counsel for the Appellant. None present for the Respondent, though duly served.

Perused the records.

3. The dispute in the present case is in respect of Gut No.231(New), admeasuring 2 Hectares 17 Ares, situated at village Borhadewadi, Taluka-Haveli, District Pune. Said property was originally owned by Raghunath Nama Saste and his wife. Raghunath had three children viz. The Appellant, Respondent No.2-Tukaram and Respondent No.3-Sakharam (deceased). The case of the Appellant is that she is one of the co-owners of the property having 1/3rd share in the suit property. She has further stated that the suit property has not been partitioned and that taking advantage of her illiteracy her brothers i.e. Tukaram and Sakharam (deceased) have compelled her to execute development agreement, power of attorney and deed of release.

4. The Appellant submits that she had not received any consideration in respect of her share in the suit property, which is being developed by the Respondent No.1. She therefore filed a suit for partition and also for cancellation of development agreement, release deed, etc. The Appellant also filed an application for temporary injunction seeking to restrain the Respondent No.1-Developer from

developing the suit property and or creating third party right in respect of the suit property. The learned Judge has dismissed the application mainly on the ground that the Appellant is a signatory to all the documents, which are duly registered.

5. Mr. Sandeep Phatak, the learned counsel for the Appellant contends that the learned Judge has totally overlooked the fact that the property was not partitioned. He submits that since the property is not formally partitioned the Respondent Nos.2 and 3 could not have handed over possession of the property in favour of the Respondent No.1-Developer. He further submits that the Appellant is the co-owner and has 1/3rd share in the property. He submits that she is an illiterate woman and was not aware of the contents of the documents i.e. development agreement, power of attorney as well as deed of release.

6. Having perused the records and having considered the submissions advanced by the learned counsel for the Appellant, in my considered view the impugned order is neither perverse nor illegal for the following reasons:-

7. It is not in dispute that the property was owned by the Respondent Nos.2 to 14 and the Appellant herein. The records prima

facie reveal that the Respondent Nos.2 to 14 as well as the Appellant herein had executed a development agreement dated 5/4/2013 whereby they had allowed the Respondent No.1-M/s. Spectrum Realty to develop the suit property. The Appellant herein was also a signatory to the power of attorney executed in favour of the Respondent No.1. The Appellant has also executed the deed of release on the same date thereby relinquishing her share in respect of the said property. All these documents are duly registered. Furthermore as observed by the learned Trial Judge, the son of the Appellant has signed the said documents as a witness. This fact prima facie negates the plea of fraud. The learned Judge also taken note of the fact that the subsequent to the execution of the development agreement the Respondent No.1 has invested a large amount for developing the suit property. The learned Judge therefore held that the balance of convenience is not in favour of the Appellant. The impugned order is neither perverse nor illegal and does not warrant interference.

8. For the aforesaid reasons the appeal has no merits and is accordingly dismissed. C.A. stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)