

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

WRIT PETITION NO. 1952 OF 2020

Arun Developers Petitioner

Vs.

Suman Madhukar Bhondve & Ors. Respondents

**ALONGWITH
WRIT PETITION NO. 8442 OF 2016**

Shri. Umesh Madhukar Bhondve & Ors.....Petitioners

Vs.

Arun Developers, Respondents
Registered Partnership Firm & Ors.

Mr. Rohit S. Gangawane for Petitioner in WP No. 1952 of 2020 and for Respondents in WP No. 8442 of 2016.

Mr. Ajay Joshi for Respondents in WP No.1952 of 2020 and for Petitioners in WP No. 8442 of 2016.

Coram : NITIN W. SAMBRE, J.

Date : 18th FEBRUARY, 2021

P.C.:

1. The Respondents/Plaintiffs files Special Civil Suit No. 1849 of 2008 thereby seeking declaration that the the Development

Agreement dated 3rd May, 2001 is illegal and other consequential reliefs. The said Development Agreement was executed based on the Power of Attorney, which is also subject matter of challenge in the suit.

2. It appears that based on the power of attorney, which is under challenge in the suit, the Petitioner got Sale-Deed executed on 29th December, 2007.

3. The Respondents/Plaintiffs being unsuccessful tried to question said Sale-Deed.

4. In the aforesaid backdrop, learned counsel appearing for the Petitioner/Defendant would urge that issue No. 7 should have been deleted from the issues, which are to be decided in the suit.

5. Issue No. 7, reads thus :

“7. Does Defendant No.1 prove that it has lawfully executed sale deed dated 29/12/2007 ?

6. An additional contention is that, the fact about execution of sale-deed within the knowledge of the Respondents-Plaintiffs, since

they have not questioned the same, as their request termed down by the trial Court and said challenge is to request withdrawal from this Court, the case of acquiescence can be inferred. Learned counsel then would urge that the Court will be unnecessarily burdened to decide issue No. 7.

7. Per contra, learned counsel for the Respondents would support the order impugned, wherein below Exhibit 190, issue No. 6 is ordered to be deleted. According to the learned counsel, the order is in the tune of Order XIV Rule 3 C.P.C..

8. Considered rival submissions.

9. If issues, which are framed are perused, amongst other, the burden is caused on the Plaintiff to prove that the registered Development Agreement is false and fabricated.

10. Issue No. 5 deals with termination of Development Agreement and also about the power of attorney.

11. Issue No.6 deals with whether the present Petitioner/ Defendant No.1 was ready to perform his part of contract. However, the said issue No. 6 is already ordered to be deleted by the trial Court.

12. In the aforesaid background, if we appreciate rival pleadings of the parties, which are formed to be a basis for framing of issues. It appears that based on the rival pleadings, issues were correctly framed and in view of the prayer of the Petitioner, issue No. 6 came to be deleted.

13. Once the Respondent-Plaintiff has questioned execution of power of attorney based on which Sale-Deed is executed on 29th December, 2007, illegality of said sale-deed will depend on the legality of the power of attorney and in that eventuality, the Court below, in my opinion, was justified in framing issue No. 7.

14. In my opinion, issue No. 7 is required to answered after the fact that the Respondents-Plaintiffs establishes their case that the power of attorney executed by them in favour of the Petitioner-Defendant No. 1 was illegal.

15. In that view of the matter, no case for interference is made out. The Writ Petition No. **1952 of 2020** fails. Dismissed.

16. On instructions, motion is made for withdrawal of Writ Petition No. **8442 of 2016**. The petition is dismissed as withdrawn.

17. However, the Petitioners are at liberty to take steps as permissible and available in law, in case the final decision goes against them.

(**NITIN W. SAMBRE, J.**)