

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

APPEAL FROM ORDER NO. 137 OF 2022

M/s. Westport Properties LLP through
its partner Shri. Ranjeet Ashok Darak ...Appellant
V/s.

S. R. Towncon Private Limited through
its Director Mrs. Sapna Dayal Lalchandani
and Ors. ...Respondents

**WITH
APPEAL FROM ORDER NO. 319 OF 2022**

Ramkrishna Dattatraya Deokar and Ors. ...Appellants
V/s.

S. R. Towncon Private Limited through its
Director Mrs. Sapna Dayal Lalchandani
and Ors. ...Respondents

**WITH
APPEAL FROM ORDER (ST) NO. 8297 OF 2022**

Nanda Shankar Deokar and Ors. ...Appellants
V/s.

S. R. Towncon Private Limited through its
Director Mrs. Sapna Dayal Lalchandani
and Ors. ...Respondents

**WITH
APPEAL FROM ORDER NO. 371 OF 2022**

Mr. Shrikant Rajaram Dhore and Ors. ...Appellants
V/s.

S. R. Towncon Private Limited through its
Director Mrs. Sapna Dayal Lalchandani
and Ors. ...Respondents

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Mr. G. S. Godbole a/w. Mr. Subhash Jadhav, Ms. Yashashree Munde and Mr. Pratik Irpatgire i/b. Parinam Law Associates, for the Appellant in AO/137/2022.

Mr. Prabhakar M. Jadhav, for the Appellant in AOST/8297/2022.

Mr. Venkatesh A. Shastry, for the Respondent Nos.8 and 13 in AO/137/2022 and AOST/8297/2022.

Mr. M. S. Athalye, for the Respondent No.1 in AO/137/2022 and AOST/8297/2022.

CORAM : C.V. BHADANG, J.

DATE : 25 JULY 2022

P.C.

1. The challenge in these appeals, is to the order dated 13 December 2021, passed by the learned Joint Civil Judge Senior Division, Pune, below Exh.5 in Special Civil Suit No.1161/2021. By the impugned order, the learned trial Court has allowed application Exh.5 and restrained the Appellants (the contesting Defendants) or anybody on their behalf from causing obstruction to the possession of the Respondent No.1 (original Plaintiff), over the suit property – B as well as from changing its nature, in any manner and creating third party interest in it, till disposal of the suit. As such, these appeals are being disposed of by this common order.

2. The brief facts necessary for the disposal of the appeals may be stated thus-

That the Respondent No.1 / Plaintiff has filed the aforesaid suit for specific performance of the agreement / Memorandum of Understanding (MoU), in respect of suit property -B, dated 9 April 2014. The specific performance is sought against the original Defendant Nos.1 to 5 and 7 to 14 and in the alternate for refund of consideration with interest.

The Respondent No.1 is also seeking a declaration that the sale deed dated 25 May 2021 executed by the Defendant Nos.1 to 5 in favour of Defendant No.18 is not binding on the Plaintiffs and for certain other consequential reliefs in respect of property - A as described in the plaint. Presently, we are only concerned with property – B, in as much as, the impugned order of temporary injunction only pertains to property -B.

3. Appeal from Order No.137/2022 is filed by M/s. Westport Properties LLP (original Defendant No.18). Appeal from Order No.319/2022 is filed by the original Defendant Nos.11, 13 and 14. Appeal from Order (ST) No.8297/2022 is filed by the original Defendant Nos.1 to 5 and Appeal from Order No.371/2022 is filed by the original Defendant Nos.15 to 17.

4. It can be seen that it is only the Defendant Nos.1 to 5, 6, 11, 13, 14 and 18 who have contested the claim of Plaintiff, while original Defendant Nos.7 to 10 and 12 have supported the claim of Plaintiff. A perusal of the impugned order shows that the Defendant Nos.15 to 17 have not appeared despite service.

5. The learned trial Court framed points about existence of prima facie case, irreparable loss and balance of convenience and all these points were answered in affirmative in favour of Respondent No.1 / Plaintiff. It is in these circumstances that the application (Exh.5) came to be allowed in the aforesaid terms in respect of property – B.

6. I have heard learned counsel for the parties. Perused record.

7. The learned counsel for the Appellants has submitted that the Plaintiffs cannot claim exclusive possession on the basis of the MoU in respect of which the Plaintiff is seeking specific performance. It is submitted that all the co-owners of the suit property are not parties to the said MoU. It is submitted that the learned trial Court, in such circumstances, could not have restrained the Appellants from causing obstruction to the Plaintiff's possession which in submission of the learned counsel is not exclusive possession over the suit property 'B' as described in the plaint. It is submitted that the Appellants have an apprehension that the Plaintiff may dispossess them on the strength of the impugned order.

8. It is submitted that the trial Court also could not have restrained the Appellants from creating third party interest or changing nature of the suit property. Except this, there are no

other contentions raised.

9. The learned counsel for the original Plaintiff as well as the learned counsel for the original Defendant Nos.7 to 10 and 12 have supported the impugned order. It is submitted that the Exchange Deed dated 31 December 2014 coupled with Corrigendum dated 27 May 2015 refers to the entire property as is evident from the description of the property in the Exchange Deed as well as Corrigendum. The learned counsel however, in all fairness, submitted that the Plaintiff is not claiming exclusive possession over the property which is described as property 'B' in the plaint, in respect of which injunction is granted.

10. I have considered the submissions made.

11. The dispute in these appeals is confined to the grant of injunction in so far as the property 'B' is concerned. By the impugned order, the learned trial Court has (i) restrained the Defendants or anybody on their behalf from causing obstruction to the possession of the Plaintiff over the suit property -B, (ii) restrained them from changing its nature in any manner and (iii) restrained them from creating any third party interest.

12. So far as the first part relating to the obstruction to the possession of the Plaintiff is concerned, the apprehension expressed on behalf of the Appellants that on the strength of the

impugned order, the Plaintiff may dispossess the Appellants, in my considered view, is misplaced in view of the statement made on behalf of the Respondent No.1 that the Respondent No.1 is not claiming exclusive possession over the suit property B.

13. This takes me to the second aspect about order restraining the Defendants from changing the nature of the property in any manner. The learned trial Court after referring to the decision of the Rajasthan High Court in *Ram Singh and Ors. Vs. Amra and Ors.*¹ has held, and to my mind rightly so that none of the co-owners can be allowed to change the nature of the suit property. The following observations of the Rajasthan High Court which have been relied upon by the learned trial Court are to the point.

“While dealing with Order 39 Rule 1 of CPC that where the land in dispute is joint and no partitioned has taken place between the co-sharers, therefore, every inch of land in dispute belong to each co-sharer, none co-sharer can be allowed to change the nature of land by raising construction before partition during pendency of suit. So a temporary injunction can be granted against co-owner and co-sharer in possession restraining them from using the land in question in any manner which would change the nature of it raising the construction during the pendency of the suit.”

¹1996 AIHC 3062.

14. Lastly, in so far as the injunction restraining the Appellants from creating third party interest is concerned, there is nothing brought on record to support the apprehension that the Appellants are in the process of or intending to create any third party interest. In any event, the transfer and / or creation of any such third party interest during the pendency of the suit will be governed by Section 52 of the Transfer of Property Act. Subject to this, no case for interference is made out. The appeals are accordingly disposed of, with no order as to costs.

C.V. BHADANG, J.