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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1676 OF 2010

Priya Vashdev Kishinechand & Anr. .. Plaintiffs

Vs.

M/s. Rupa Land Developers & Ors. .. Defendants

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1256 OF 2011

Narender Manohardas Assomull and Anr. .. Plaintiffs

Vs.

Meera Kishore Assomull and Ors. .. Defendants

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 410 OF 2013

IN

SHORT CAUSE SUIT NO. 420 OF 1984

Chhatrapati Shivaji Kutir Mandal & Anr. .. Appellants
(Org. Plaintiffs)

Vs.

Kurla Scrap Dealers' Association & Ors. .. Respondents
(Org. Defendants)

Aditya Shiralkar i/b. Javed Gaya for the Plaintiff in S/1676/2010.

R. A. Shaikh i/b. Mansukhlal Hiralal & Co. for Defendant No.1, 2, 3(a), 3(b), 4(b) and 4(c) in S/1676/2010.

Aditya Shiralkar a/w. Javed Gaya for Defendant No. 6, 7 and 7(a) in S/1676/2010.

Aditya Shiralkar a/w. Mona Malvade & Vidya Chaudhari for Defendant Nos. 8 to 10 in S/1676/2010.

Simil Purohit a/w. Dipen Furia i/b. M/s. Niranjan & Co. for the Appellant in FA/410/2013 & for Defendant Nos.11 to 14 in S/1676/2010.

Atul Daga i/b. Wasimur R. Khan for Defendant Nos. 15 & 16 in S/1656/2010.

Suraj Iyer a/w. Rickin Dang i/b. Ganesh & Co. for Defendant Nos. 17 & 18 in S/1676/2010.

Pravin Samdani, Sr. Counsel a/w. Nitesh Ranavat, Anushree Udani, Rashin Mantri & Bhairavi Shah i/b. Wadia Ghandy & Co. Defendant no. 19 in S/1676/2010.

Mandar Soman a/w. Gobinda C. Mohanty i/b. Mohanty & Associates for Intervenor in FA/410/2013 & Applicant in CAF/3375/2017.

Wasimur Rahman Khan for Respondent Nos. 1 to 4 in FA/410/2013.

E. B. Sivakumar, 1st Asst. to the Court Receiver is present in FA/410/2013.

Ravindranath Prajapati i.e. Defendant No.2 and Partner of M/s. Rupa Land Developers i.e. Defendant No.1 is present in person.

Aarti Morarjee Prajapati i.e. Defendant No.3(a) and partner of M/s. Rupa Land Developers i.e. Defendant No.1 is present in person.

Akansha Morarjee Prajapati i.e. Defendant No.3(b) and partner of M/s. Rupa Land Developers i.e. Defendant No.1 is present in person.

Kavita Somnath Prajapati i.e. Defendant No.4(b) and partner of M/s. Rupa Land Developers i.e. Defendant No.1 is present in person.

Karan Somnath Prajapati i.e. Defendant No.4(c) and partner of M/s.Rupa Land Developers i.e. Defendant No.1 is present in person.

Abdul Latif Mahboob Ali Shah i.e. Defendant No.12 for himself and as representative of Defendant No.11 is present in person.

Gulam Mohammed Habib Shah i.e. Defendant No.13 is present in person.

Habib Kallu Shah i.e. Defendant No.16 for himself and as representative of Defendant No.15 is present in person.

Santosh Sarda, representative of Defendant No.17 and Mr. Deepak Sarda, representative of Defendant No.18 are present in person.

Abhay Chandak, representative of Defendant No.19 is present in person.

CORAM:- B. P. COLABAWALLA,J.

DATE :- 12th JULY, 2022.

P. C.:

1. The learned advocate appearing on behalf of the Plaintiff has tendered draft amendments seeking leave to amend the cause title of the plaint in Suit No. 1676 OF 2010. None of the parties present today have objected to the said amendments. In these circumstances, the draft amendments handed in are taken on record and marked “X” for identification. Leave to amend the cause title of the plaint in Suit No.1676 of 2010 in terms of the draft handed in, is granted. Re-verification is dispensed with. Amendments shall be carried out within a

period of two days from today.

2. When the above matter is called out, the parties have tendered the Consent Terms dated 25th March, 2022. To these Consent Terms, the newly added Defendant Nos. 6, 7, 7(a), 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 & 19. In Suit No. 1676 of 2010 are also signatories. The learned advocates appearing on behalf of these newly added Defendants have stated that they shall file their respective Vakalatnamas within a period of two weeks from today. The said statements are accepted as undertakings given to the Court.

3. The Consent Terms dated 25th March, 2022 not only dispose of Suit No. 1676 of 2010 but also Suit No.1256 of 2011 and First Appeal No. 410 of 2013.

4. The Consent Terms have been signed by the Plaintiffs as well as Defendant Nos. 1, 2, 3(a), 3(b), 4(b), 4(c), Defendant Nos.6 & 7 [through their Karta], 7(a), 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 & 19. The learned advocate appearing for these respective Defendants has stated before the Court that they are in a possession to identify the signature of their respective clients who have signed the above Consent Terms. Further, I am informed that the Partner of Defendant No. 1 as well as Defendant Nos. 2, 3(a), 3(b), 4(b) and 4(c) are all present in Court.

Similarly, Defendant Nos. 12 & 13, who are the representative of Defendant No.11 are also present in Court. Similarly, Defendant Nos. 17 & 18 as well as the Director of Defendant No. 19 are also present in Court today. Defendant No. 16 who is the representative of Defendant No.15, is also present in Court. All the parties who are present have stated before the Court that they have signed the Consent Terms after reading and understanding the same as well as the implications thereof. In these circumstances, the Consent Terms dated 25th March, 2022 are taken on record and marked “X-1” for identification. The undertakings given in the Consent Terms are accepted as undertakings given to the Court. Suit No.1676 of 2010 is decreed in terms of the Consent Terms. Refund of Court Fees, if any, as per rules.

5. Similarly, Suit No. 1256 of 2011 is also decreed in terms of Clause 13 (xx) of the Consent Terms. Refund of Court Fees, if any, as per rules.

6. By consent of parties, the Office of Prothonotary and Senior Master of this Court is directed to handover the original title documents taken in the custody of this Court vide order dated 15th June, 2015 (passed in Suit No. 1676 of 2010) to the newly added Defendant No. 19 in Suit No. 1676 of 2010. This exercise shall be completed by the

Prothonotary and Senior Master within a period of one week from today.

7. As recorded in the Consent Terms, the Appellants in First Appeal No. 410 of 2013 [Defendant Nos. 11 to 14 in Suit No.1676 of 2010] seek to unconditionally withdraw the First Appeal. Accordingly, the First Appeal is hereby dismissed as withdrawn. The Court Receiver, High Court, Bombay appointed vide order dated 6th January, 1987 in Suit No.420 of 1984 by the Bombay City Civil Court at Bombay and continued vide order dated 24th April, 2013 in First Appeal No. 410 of 2013 [passed by this Court] is hereby discharged without passing accounts but on the payment of his costs, charges and expenses. The costs, charges and expenses of the Court Receiver shall be adjusted from the funds lying with the Court Receiver in Suit No. 420 of 1984. If there is any deficit that needs to be recovered, the same shall be paid by Defendant No.18 within a period of one week of the Court Receiver calling upon the advocate for Defendant No.18 to pay the deficit. If there is any surplus, the parties have agreed that the same can be donated to the Tata Memorial Centre. Since, the Court Receiver has informed me that he had taken only symbolic possession, and that he is now disclosed, there is no question of him handing over actual physical possession to any party. He is directed to remove his board from the

property in relation to which he was appointed.

8. Mr. Soman, the learned advocate appearing on behalf of Respondent No.13 in First Appeal No. 410 of 2013 has brought to my attention that these Consent Terms have not been forwarded to him and he is therefore unable to ascertain whether these Consent Terms in any way affect the rights of Respondent No.13. Mr. Soman submitted that Respondent No.13 claims certain development rights in the area admeasuring 11,587 Sq. Meters on Survey No.198 (Part) CTS Nos. 1, 2 [1 to 13] situate at CST Road, Kurla, Mumbai – 400 070.

9. The learned advocates appearing for the Plaintiffs as well as the Defendants in Suit No. 1676 of 2010 have all stated before the Court that the Consent Terms arrived at between them do not in any manner touch upon the aforesaid property claimed by Respondent No.13. Once this clarification is given and statement recorded, Mr. Soman, has fairly stated that Respondent No.13 then has no objection to the aforesaid Consent Terms. It is duly noted.

10. Considering that the above Suits as well as the above First Appeal are disposed of under the Consent Terms read with this order, nothing survives in any interlocutory applications pending in the aforesaid suits or the First Appeal and the same are disposed of

accordingly.

11. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)