

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 29 OF 2021
IN
SPECIAL CIVIL SUIT NO. 31 OF 2020

ALONGWITH
INTERIM APPLICATION NO. 211 OF 2021

GANPAT DHONDU MADHAVI
AND ORS. } APPELLANTS

V/S.

KESARINATH MAHADHUR
CHAUDHARY (DECEASED) THR.
LRS. SANDESH MACHINDRA
CHAUDHARY & ORS. } RESPONDENTS

* * * *

Mr. Akshay S. Malviya a/w. Mr. Kailash Baug,
Advocate for the appellants.

Mr. S.M. Kamble, Advocate for respondents no.1/1, 1/2
and respondent no.2.

Ms. Aparna Shinde, Advocate for respondent no.9, 9.1
and 9.2.

Mr. Rohit Sukhadeo i/by. Sakhadeo and Associates,
Advocate for respondents no.11 to 15-CIDCO.

Coram : Sandeep K. Shinde, J.

Wednesday, 16th March, 2022.

P.C. :

1) Heard learned Counsel for the parties.

2) Appellants instituted suit for partition and separate possession of their one-fourth undivided share in the suit plots no.A/8 and 9, situated at Village-Taloje, Taluka-Panvel, District-Raigad. Pending suit, trial Court vide order dated 9th September 2020, declined to restrain defendant no.9-purchaser of suit Plot No.A/8 from developing and/or creating third party rights therein. That order is challenged by the plaintiffs in this Appeal.

Facts of the case are like this :

3) Daji, was common ancestor of the plaintiffs and defendants no.1 to 8. Daji died in 1942. He had two sons; Mahadu and Panga. Daji, Mahadu and Panga, joint family, were tenants in agricultural lands at Village-Taloja and Ove, Taluka-Panvel, District-Raigad. Panga died in 1942. He was survived by two daughters, Dharmubai and Kharubai. Plaintiff's are claiming their right in the suit properties, through their mother, Dharmubai.

4) After Daji's death, in revenue records, name of Mahadu, elder son of Daji was entered into as a "Karta". Mahadu died in 1971; after which his elder son, Kesarinath, became the "Karta" and his name was entered

into revenue records, in respect of lands at Village-Taloje and Ove. Around 1971-72, City and Industrial Development Corporation (CIDCO) acquired these lands and Award was passed in the name of family members of Kesarinath. As per the 12.5% scheme floated by CIDCO, plot no.A/8 and 9 were allotted to Kesarinath and his brother, Nivrutti in 2011. It is plaintiff's case that, although award under Land Acquisition Act, was passed in the name of Kesarinath and his branch, the compensation was apportioned amongst all family members. Contention of the plaintiff is that, the suit plots A/8 and 9 were allotted to Kesarinath and his brother Nivrutti, not in their individual capacity but on behalf of joint family, consisting of the legal heirs of Mahadu and Panga. Yet, Kesarinath, Nivrutti and Sunil Mahadu Kadam, without knowledge of the plaintiffs, sold plot no.9 to defendant no.10, M/s. Silver Homes, vide tripartite agreement dated 1st July, 2011. In so far as the, Plot no.A/8 is concerned, it appears from the evidence that, Kesarinath during his lifetime, executed a Will and bequeathed equal share, in suit plot no.A/8 to his grandsons-Sandesh (Defendant no.1/1/1) and Nitin

(Defendant no.1/1/2). While, after Will of Kesarinath was probated in Civil Miscellaneous Application No.53/2015, by the Court of competent jurisdiction, suit plot no.A/8 was sold to defendant no.9 by Sandesh, Nitin and Nivrutti, vide tripartite registered agreement 23rd January 2017, followed by supplementary agreement dated 23rd March, 2019. The material on record, evidently shows, before purchasing and/or acquiring development rights in Plot A/8, defendant no.9 had exercised due diligence. In the backdrop of these facts and events, prima-facie, documents on record do not lead to belief, that after death of Panga in the year 1966, through whom the plaintiffs are claiming their rights in the suit property, had bothered to protect and secure their rights, in the suit lands which they are asserting now. Undoubtedly, the revenue records, acquisition proceedings, order passed therein were, throughout disclosing names of family members of Kesarinath branch, and not Panga. It may be noted that, the suit plots A/8 and 9, were allotted to Kesarinath and his brothers-Nivrutti and Sunil in 2011. Apparently, the family members of branch of Panga had never asserted their

rights and/or participated in the acquisition proceedings, after Panga's death, who died in the year 1966. Therefore, since 1966 onwards till the institution of suit in January 2020, plaintiffs and their predecessor-in-title, chose to remain silent and made no efforts, either to assert their rights or to challenge the Awards passed by the CIDCO. Infact, the pleadings of the plaintiffs indicate; that after the Award was passed under the Land Acquisition Act, the compensation was apportioned amongst the family members. Assuming this assertion of the plaintiff is correct, the fact remains as to why the plaintiffs did not sought their claim in the suit plots which were allotted to CIDCO to the branch of Kesarinath in the year 2011. The plaintiffs have not pleaded and/or explained, as to why, they did not challenge the tripartite agreements executed by Kesarinath in favour of defendant no.10. Additionally, the plaintiffs even did not challenge the, 'Will' of Kesarinath, whereby he bequeathed the Plot A/8 to his grandsons, Sandesh and Nitin. Assuming, the compensation was apportioned amongst the family members, it is to be presumed that the plaintiffs had

knowledge of allotment of the suit plots to Kesarinath. Thus, it is to be gathered from the material on record that, the plaintiffs were not watchful of their their rights in the suit lands, since after the death of their predecessor-in-title in the year 1966. This fact, prima-facie, renders the plaintiff's case indefinite and improbable. On the other hand, documents and pleadings on record, also suggest that the defendant no.9, was bonafide purchaser of the plot no.A/8 for value. They had no knowledge of branch of, Panga. Factually speaking, the defendants no.1 and 2, have also denied their relations with the plaintiffs. This fact, prima-facie, strengthens the contention of defendant no.9 that, he exercised due diligence and a bonafide purchaser of plot A/8 for value. Admittedly, defendant no.9 has constructed a building on plot no.A/8, after securing the building permissions from the local authority and also sold the flats to the various purchasers. Therefore, having regard to the facts of the case, the learned trial Court has correctly declined to restrain defendant no.9, from developing the Plot A/8, vide order dated 8th September,

2020. For all that reasons, no interference is called for in the impugned order. Appeal is dismissed.

5) With dismissal of the Appeal, Interim Application No. 211 of 2021 does not survive. The same is accordingly disposed of.

NEETA
SHAILESH
SAWANT

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(Sandeep K. Shinde, J.)