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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 297 OF 2021**

M/S. ROMA BUILDERS PVT. LTD. THR.APPLICANT
DIRECTOR MR. NIRANJAN L HIRANANDANI

V/s.

M/S. VIJAY GRIHANIRMAN PVT. LTD.RESPONDENT
THR. AUTHORISED SIGNATORY
SHREE DEEPAK L. FURIA

**WITH
CIVIL WRIT PETITION NO. 8831 OF 2021**

M/S. ROMA BUILDERS PVT. LTD.PETITIONER

V/s.

M/S. VIJAY GRIHANIRMAN PVT. LTD. AND ORSRESPONDENTS

Ms. Gauri Godse a/w Mr. Rohit D. Joshi for Applicant-Petitioner
Mr. Manoj J. Bhatt a/w Mr. Gautam J. Jain for Respondent no. 1

**CORAM : NITIN W. SAMBRE, J.
DATE: FEBRUARY 15, 2022.**

P.C.:

1) This Revision is by Plaintiff-Decree Holder, vide Judgment and Decree dated 10/12/2020 Special Civil Suit No. 305/2010 came to be decreed by 5th Jt. Civil Judge Senior Division, Thane. The said Suit for specific performance was decreed with following directions.

“O R D E R

1. Suit is decreed.

2. It is hereby declared that suit agreement no. 3744/2007, dated 16/05/2007 is legal, valid and binding upon the defendants.

3. Defendants are ordered to specifically perform the suit agreement and to execute a conveyance of suit properties in favour of plaintiff. If defendants are failed to execute a conveyance then plaintiff may get execute a conveyance by appointment of Court Commissioner.

4. Defendants or anyone claiming through them are permanently restrained from disturbing possession of the plaintiff upon suit properties.

5. Decree be drawn up accordingly.”

2) The aforesaid Decree is based on agreement in relation to four suit properties, entered into on 16/05/2007.

3) Respondent, proposed appellant, based on registered development agreement dated 02/12/2002 invoked proceedings before learned District Judge seeking grant of leave to appeal which is against aforesaid Judgment and Decree allowed vide impugned order dated 26/08/2021 passed by Principal District Judge, Thane. As such, this Revision.

4) Submissions of learned counsel for the Applicant are, perusal of terms of the development agreement dated 02/12/2002 does not carve out vesting of any right in the proposed appellant. According to her, apart from the fact that claim based on the said agreement of development is time barred, terms of the said agreement are not complied with. As such, it is the contention of learned counsel for the applicant that proposed-appellant respondent-herein is not an aggrieved party. She would further claim that even if presuming that proposed appellant would have been impleaded as party Defendant to the Suit, his proposed defence would not have affected the ultimate result of the Suit. According to her, the right if any to the proposed appellant under the alleged agreement is against the original Plaintiff. According to her, Decree passed nowhere adversely affects the rights of the proposed appellant and that being so, order impugned is liable to be quashed and set aside. So as to substantiate the aforesaid contentions, counsel for the applicant would rely on the Judgment of the Apex Court in the matter of **V. N. Krishna Murthy and another V/ s. Ravikumar and others**¹.

5) Counsel for Respondent-proposed appellant would support the

¹ (2020) 9 Supreme Court Cases 501

Judgment impugned as according to him, there is sufficient material which is taken into account by the learned District Judge to infer that the rights of the proposed appellant are prejudicially affected. That being so, he would claim that no interference is called for in Revisional jurisdiction as there is no error of law could be noticed. As such, rejection of the Revision is sought.

6) Considered rival submissions.

7) The fact remains that Respondent-appellant has carved out his rights based on a registered development agreement dated 02/12/2002. Party to the said agreement, apart from the appellant is, Respondent-Defendant who has entered into another agreement of sale and development dated 16/05/2007 in favour of present Applicant-Decree holder.

8) The aforesaid agreement is formed to be basis for initiation of Suit for specific performance. Property survey no. 259 Hissa No. 1 area 0.78.7H is the bone of contention to the extent of right claimed by appellant based on development agreement dated 02/12/2002. Attempt on the part of the appellant to get himself impleaded as third party in view of provisions of Sub Rule 2 of Rule 10 Order I of Code of

Civil Procedure was turned down by the trial Court at the instance of the Petitioner. However, Writ Petition questioning the said order has rendered infructuous as Suit itself was decreed. However, in the Petition, right of the appellant was kept in tact for taking appropriate steps in the matter. As a sequel, appellant who is respondent in the present petition has chosen to prefer Application Exh. 5.

9) Learned counsel for the Applicant has canvassed that original appellant cannot be termed as the person aggrieved or whose rights are effectively prejudiced. What can be noticed from the order impugned is, learned District Judge has proceeded to consider the test laid down by the Apex Court in catena of Judgments, such as one referred to in the Judgment which is relied on by the counsel for the applicant **V. N. Krishna Murthy and another** [cited supra].

10) The fact remains that Suit property consists of such part of the land which was agreed to be developed by the proposed appellant/party to the agreement dated 02/12/2002. As a sequel of the Suit being decreed, development agreement which was entered into with proposed appellant on 02/12/2002 will render ineffective, particularly when the Suit property by virtue of impugned Judgment

will vest in the present applicant thereby jeopardizing the rights of the appellant which is carved out from the registered agreement of development dated 02/12/2002.

11) The Apex Court in the matter of exercising powers while granting leave to file appeal by third party, has observed that Court is required to consider whether Judgment and Decree against which the Appeal is sought to be preferred is prejudicially affecting the rights of the party who is not impleaded or not permitted to be impleaded to the proceedings. In the case in hand, it is required to be noted that applicant has shown resistance to attempt made by the proposed appellant to get himself impleaded in the suit proceedings. As a consequence of which, appellant was required to approach this Court in a writ petition. As such, it is not that present applicant is taken by surprised by the act of proposed appellant of applying for grant of leave to appeal against the Judgment as the fact that he has right in the part of the Suit property was well within the knowledge of the present applicant.

12) As has been observed herein above, once the Decree is executed, part of the Suit property in which appellant, who has

sought leave to appeal will be losing his valuable rights assured under the agreement. That being so, it has to be held that proposed appellant has every locus to prefer the Appeal and in case if the leave is not granted, his right and interest shall be adversely affected.

13) That being so, in my opinion, order impugned in the present application is in tune with the provisions of law. No error of exercise of jurisdiction could be inferred. That being so, Revision fails, stands dismissed.

14) As regards the issue of limitation is concerned, Apex Court in catena of judgments has already held that issue of limitation is mixed question of facts and law. Said issue can be duly considered by the Appellate Court while deciding the Appeal provided the appropriate arguments in support of such issue is canvassed. If so canvassed, Appellate Court is expected to decide such issue of limitation without being influenced by the findings recorded herein above.

15) As far as the challenge in the Writ Petition is concerned, order impugned dated 09/09/2021 is passed in the pending Appeal granting interim relief. Learned counsel for the Decree holder would urge that appellant has failed to demonstrate any prima facie case in

the matter and that being so, Appellate Court ought not to have granted stay to the execution of the Decree.

16) Apart from above referred reasoning, what is required to be noted is, execution of the Decree is only to the extent of land survey no. 259 Hissa No. 1 area 0.78.7H. Counsel for the appellant informs that he shall be filing paper-book before the Appellate Court within period of 6 weeks from today. Since the statement is made on instructions, same is accepted as an undertaking.

17) In case if the appellant fails to file private paperbook within period of 6 weeks from today, Appellate Court shall forthwith vacate the interim relief.

18) In case if the paperbook is filed within stipulated period, the Appeal be decided expeditiously thereafter and in any case within period of 12 weeks thereafter.

19) Writ Petition as such stands disposed of.

[NITIN W. SAMBRE, J.]