

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

WRIT PETITION NO.5085 OF 2022

Smt. Draupadi Namdev Patil
Since deceased through legal heirs
Arvind Namdeo Patil and Ors. ..Petitioners
Versus
Kusum Indrapal Bhoir and Ors. ..Respondents

Mr. Kishor K. Malpathak, for the Petitioners.
Mr. Atul Rajadhyaksha, Senior Advocate a/w Dharmesh Joshi i/by T.
D. Joshi & Associates, for the Respondent No.9.

CORAM : NITIN W. SAMBRE, J.

DATE : 25th APRIL, 2022

PC.

1. This petition is by the plaintiffs to Special Civil Suit No.657 of 2010. The petitioners in the capacity of legal heirs of deceased Indrapal sought 1/7th share in the suit property which was purchased by the defendant No.9.

2. Since the defendant No.9 started developing the said property, application Exh.73 came to be moved under Order XXXIX Rule 1 and 2 of the CPC seeking injunction against the defendant No.9 to the extent of not to develop the suit property or create third party interest. The said prayer was rejected vide order impugned dated 20th August, 2018 passed by the 9th Joint Civil Judge, Senior Division, Thane, which is confirmed in an appeal preferred by the

petitioners/plaintiffs being MCA No.216 of 2018 vide order dated 28th June, 2019. As such, this petition.

3. Submissions of Mr. Kishor Malpathak, counsel appearing for the petitioners/plaintiffs are, both the Courts below committed an error in refusing injunction, as admittedly the petitioners are the legal representatives of the deceased Indrapal from whom the defendant No.9 claimed to have purchased the property. According to him, since the status of the petitioners that of legal representatives of deceased Indrapal is not disputed, the Courts should have enjoined the respondent/defendant No.9 from developing the property or creating third party interest. Drawing support from the judgment of the Apex Court in the matter of ***Bina Murlidhar Hemdev and Ors. Vs. Kanhaiyalal Lokram Hemdev and Ors.*** reported in ***(1999) 5 SCC 222***, it is urged that unless it is demonstrated by the defendant No.9 that he is purchaser of the suit property without notice, the petitioners were entitled for temporary injunction. Further contention is, being legal heirs of deceased Indrapal, petitioners' right to succeed to the estate of Indrapal is not in dispute. That being so, there is strong likelihood that of the petitioners getting succeeded in the suit claim. Once the defendant No.9 is permitted to develop the suit property, the very object of filing of the suit will be frustrated and as such, it is prayed that the defendant No.9 be restrained by either carrying out development or he be mandatorily directed to deposit sale proceeds of 1/7th part of the suit property in the Court.

4. The prayer is opposed by Mr. Atul Rajadhyaksha, learned senior counsel for the respondent No.9. According to him, the title of the defendant No.9 over the suit property is perfected through the compromise decree drawn in Special Civil Suit No.66 of 2001 during the lifetime of Indrapal. He would invite my attention to the compromise decree executed on 14th September, 2005 and the conveyance accordingly executed thereafter. He would further urge that defendant No.9 is in settled possession as the said Special Civil Suit being for special performance was based on the development agreement executed on 16th March, 1985 which was registered on 6th November, 1986. As such, he would urge that against the concurrent findings, the Court should be slow in causing interference.

5. I have appreciated the said submissions.

6. The defendant No.9 perfected his title based on registered agreement dated 16th March, 1985 and the compromise in the said Suit No.66 of 2001 by getting conveyance executed on 14th September, 2005 which is registered document. Indrapal alleged to have been expired in 2007.

7. The fact remains that during the pendency of the Special Civil Suit No.66 of 2001, petitioners/plaintiffs were major and could have asserted their rights in the suit property, if so denied by Indrapal, by initiating suit for partition and separate possession

against him.

8. Rather the inference from the conduct of the petitioners to be drawn is the petitioners appears to be beneficiaries out the compromise decree in the earlier suit between deceased Indrapal and the defendant No.9.

9. Apart from above, it is not the case of the petitioners that sale by Indrapal of the suit property in favour of the defendant No.9 was for necessity.

10. In the aforesaid background, both the Courts below were justified in rejecting the prayer of the petitioners.

11. Reliance placed on the judgment of the Apex Court in the matter of *Bina Murlidhar Hemdev (cited supra)* will be of hardly any significance, as it is not the case of the defendant No.9 herein that he is purchaser of the suit property without notice. Rather it was for the petitioners to establish that there is *prima-facie* case and the petitioners were diligent in pursuing their timely remedy. For the aforesaid reasons, I hardly see any reason which warrants interference in concurrent findings recorded by both the Courts below.

12. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]