

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

**APPEAL FROM ORDER NO.811 OF 2022
WITH
INTERIM APPLICATION NO.91 OF 2022**

Balaji Construction

Through Prop.

... Appellant

Versus

Pravin Hindurao Thanekar & Ors.

... Respondents

...

Mr. S. S. Deshmukh, for Appellant.

Mr. Pravin B. Gole, a/w. for Respondent Nos. 7 to 14.

...

CORAM : SANDEEP V. MARNE, J.

DATE : 01 NOVEMBER 2023.

P.C.:

. The challenge in the present petition is to the Judgment and Order dated 07 June 2019 passed by the District Judge-2, Kolhapur in Regular Civil Appeal No.205 of 2014. The entire Judgment and Order dated 07 June 2019 is not challenged by the Appellant. He is aggrieved only by the following observations made by the lower Appellate Court in the Judgment and Order dated 07 June 2019 :-

‘21. Whether the transaction in between defendant No.1, 6 to 13 and No.14 is binding on plaintiff or not, it is a matter of fact and it is required to be decided on merit.’

2. After recording above finding the lower Appellate Court has set aside the Judgment and Decree passed in R.C.S. No.605 of 2007 and has

remanded the Suit for re-trial. Notice of present Appeal issued on Respondent No.1 who is original Plaintiff who has chosen not to appear in the present petition.

3. Mr. Deshmukh, the learned counsel appearing for Appellant would express an apprehension that above quoted observations may be construed by the Trial Court as if development agreement executed in favour of Appellant / Defendant No.14 would also become subject matter of challenge in the remanded suit. He would draw my attention to paragraph No.16 of the Judgment and Decree dated 07 June 2014 passed in R.C.S. No.605 of 2007 where the Trial Court has specifically recorded that though the Plaintiff had sought a declaration that the development agreement executed in favour of Defendant No.14 was not binding on him, said prayer has specifically been deleted by the Plaintiff.

4. In my view, since the prayer regarding development agreement executed in favour of Defendant No.14 already stands deleted from the R.C.S. No.605 of 2007, the above quoted observation made by the lower Appellate Court cannot be construed to mean as if the Plaintiff would be permitted to pursue any challenge to the development agreement executed in favour of Respondent No.14 in absence of any specific prayer to that effect.

5. From the above clarification nothing further needs to be adjudicated in the present Appeal. With the above clarification Appeal is disposed of. Since the Appeal is disposed of nothing survives in the Interim Application and it is also disposed of.

(SANDEEP V. MARNE, J.)

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