

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.291 OF 2019
WITH
CIVIL APPLICATION NO.345 OF 2019**

Shayona Developers and Ors. ... Appellants
versus

Babubhai Chhanabhai Patel and Ors. ... Respondents

**WITH
APPEAL FROM ORDER (ST) NO.3158 OF 2019**

Sandip Laxman Patel and Ors. ... Appellants
versus

Babubhai Chhanabhai Patel and Ors. ... Respondents

**WITH
INTERIM APPLICATION (ST) NO.17471 OF 2021
WITH
CIVIL APPLICATION (ST) NO.7432 OF 2019**

Mr Balkrishna D. Joshi for Appellants in AO 291 of 2019.

Mr. Pramod N. Joshi for Respondent Nos.2 to 7 in AO 291 of 2019 and for Appellants in AOST 3158 of 2019.

Mr. Mandar Soman with Mr. Hardik Joshi, for Respondent Nos.1A to 1D in AO 291 of 2019 and for Respondents in AOST 3158 of 2019.

Mr. Hiten Venegaonkar, for Respondent No.13 in AO 291 of 2019.

CORAM: N.J.JAMADAR, J.

DATE : 22 JUNE 2023

P.C. :

1. These Appeals are directed against an order dated 20 December 2018 passed by the learned Civil Judge, Senior Division, Dadra and Nagar Haveli, Silvassa, on an application for temporary injunction (Exhibit 5) in Special Civil Suit No.91 of 2018. The Appellants in Appeal No.291 of 2019 are the original Defendant Nos.9 to

12. Respondent Nos.1a to 1d are the legal representatives of deceased Respondent No.1 – original Plaintiff. Respondent Nos.10 to 12 are the original Defendant Nos.13 to 15. Whereas, the Appellants in Appeal (ST) No.3158 of 2019 are the original Defendant Nos.1 to 7.

2. Laxmanbhai J. Patel and Kabliben Laxmanbhai Patel, the alleged predecessors in title of the Plaintiff and Defendant Nos.13 to 15, were granted occupancy rights in respect of Government Land bearing Plot No.76/P/1, 77/P/1, 77/P/5 situated at Village Amli, Union Territory of Dadra and Nagar Haveli (the suit properties). The original Plaintiff claimed, he was the grandson of Laxmanbhai and Kabliben Patel. Laxmanbhai died on 24 July 1999 and Kabliben passed away on 28 March 2000. Plaintiff's father Chhanabhai had pre-deceased them on 7 December 1981.

3. After the demise of Laxmanbhai and Kabliben, according to the Plaintiff, the Plaintiff and Defendant Nos.13 to 15 were the only legal heirs of original holders. When the Plaintiff and Defendant Nos.13 to 15 approached the revenue authorities to mutate their names to the record of rights of the suit properties, it transpired that the predecessors in title of Defendant Nos.1 to 6 had got their names mutated to the record of right of the suit properties on the basis of false and fabricated documents. It further transpired that the documents on the basis of which the name of predecessor in title of Defendant Nos.1 to 6 were mutated, were not forthcoming. On the

application of the Plaintiff to mutate his name to the suit properties, the Mamlatdar of Dadra and Nagar Haveli passed an order directing the Plaintiff to approach the competent authority.

4. In the meanwhile, Defendant No.7 who, according to the plaintiff, had no right, title and interest in the suit properties, sold portion of the suit properties to Defendant No.8 by a Registered Sale Deed dated 9 April 2014. Defendant No.8, in turn, sold the suit properties to Defendant Nos.9 to 12 under a Sale Deed dated 17 March 2015. Asserting that the Plaintiff had $\frac{1}{4}^{\text{th}}$ share in the suit properties and was, therefore, entitled to partition and separate possession of his share in the suit properties and that the instruments executed by and between Defendant Nos.1 to 13 are illegal and void, the Plaintiff instituted suit for declaration, partition and possession.

5. In the said suit, the Plaintiff took out an application for temporary injunction. Defendant Nos.1 to 7 resisted the application contending that taking undue advantage of similarity in name, the Plaintiff was trying to usurp the property to which he was not entitled to. The claim of the Plaintiff that his father Chhanabhai was the son of Laxmanbhai and Kabliben was contested.

6. Defendant Nos.8 to 12 claimed to be bonafide purchasers of the suit properties for valuable consideration. The claim of the Plaintiff that Chhanabhai was the son of Laxmanbhai and Kabliben was stated to be bald and unsubstantiated.

Thus, there was no prima facie right, title and interest in the suit properties in the Plaintiff.

7. By the impugned order, the learned Civil Judge was persuaded to allow the Application and restrain the Defendants from selling, alienating and/or otherwise creating third party interest in the suit properties and also from changing the nature of the suit properties till the final disposal of the suit.

8. Being aggrieved, Defendant Nos.9 to 12 have preferred Appeal No.291 of 2019 and Defendant Nos.1 to 7 have preferred Appeal (ST) No.3158 of 2019.

9. I have heard Mr. Balkrishna Joshi, learned Counsel for the Appellants in Appeal No.291 of 2019, Mr. Pramod N. Joshi, learned Counsel for the Appellants in AOST 3158 of 2019 and for Respondent Nos.2 to 7 in Appeal No.291 of 2019, Mr. Mandar Soman, learned Counsel for Respondent Nos.1a to 1d in Appeal No.291 of 2019 and Mr. Hiten Venegaonkar, learned Counsel for Respondent No.13. With the assistance of the learned Counsel for the parties, I have perused the pleadings, Affidavits and the documents on record.

10. Mr Balkrishna Joshi, learned Counsel for the Appellants in Appeal No.291 of 2019 submitted that on the basis of the professed purported $\frac{1}{4}$ th share in a portion of the suit properties, the Plaintiff has succeeded in stalling the entire development project being carried out by Defendant Nos.9 to 12. In the absence of any material to indicate that the Plaintiff is the successor in interest of Laxmanbhai

and Kabliben, the learned Civil Judge committed an error in granting a blanket injunction against the Defendants. In any event, according to Mr. Balkrishna Joshi, whatever occupancy rights late Laxmanbhai and Kabliben had, were lawfully cancelled by the Administration, as evidenced by the orders passed by the revenue authorities. Upon such cancellation, the occupancy rights were granted in favour of Dituben Bhangiyabhai Jamanabhai Patel. Thus, the claim of the Plaintiff based on grant of occupancy rights in favour of Laxmanbhai and Kabliben is wholly unsustainable.

11. Mr. Pramod N. Joshi, learned Counsel for the Appellants in AOST No.3158 of 2019 supplemented the submissions of Mr. Balkrishna Joshi. In addition, Mr. P.N.Joshi would urge that, viewed from any perspective, the impugned order to the extent it restrains the Defendants from altering the nature of the suit properties is clearly unsustainable. The Defendants who have been put in possession of the suit properties could not have been restrained by such a blanket order, submitted by Mr. P.N.Joshi.

12. Mr. Mandar Soman, learned Counsel for Respondent Nos.1a to 1d – original Plaintiff laid emphasis on the fact that the occupancy rights purportedly granted on 6 December 2013, in favour of Dituben, were shown to have been granted since 1 May 1974. This grant of the occupancy rights with retrospective effect in the backdrop of the case of the Administration that the occupancy rights in favour of Laxmanbhai and Kabliben were cancelled in the month of May 2001, singularly erodes

the sanctity of the grant of the occupancy rights irretrievably. Mr. Soman would submit that the Administration was, therefore, directed to file an Affidavit.

13. Inviting the attention of the Court to a communication dated 31 October 2019 addressed by the Resident Deputy Collector, Dadra and Nagar Haveli, wherein it is categorically mentioned that the files do not contain the original judgment passed by the Resident Deputy Collector dated 26 June 2000 in Suo Motu Revision No.8 of 2019 and the orders of LRO dated 6 December 2013 whereby and whereunder the occupancy rights in respect of the suit properties were allegedly granted in favour of Dituben, after cancelling the occupancy rights in favour of Laxmanbhai and Kabliben, Mr. Soman would urge that, the entire defence is based on an egregious fraud.

14. In the backdrop of the aforesaid nature of the controversy, at this stage, the contentious issues cannot be delved into in these appeals. The questions as to whether the occupancy rights granted in favour of Laxmanbhai and Kabliben were lawfully revoked and the occupancy rights in favour of Dituben were lawfully granted, or for that matter, the entire exercise has been vitiated by fraud, are rooted in facts and are matters for trial. What the Court is required to appreciate in these Appeals is whether the learned Judge arrived at a justifiable conclusion that the Plaintiff had made out a prima facie case of right, title and interest in the suit properties.

15. On the basis of the material on record, especially the death certificates of Laxmanbhai, Kabliben and Chhanabhai and the documents to show that Laxmanbhai

was the father of Chhanabhai, the learned Civil Judge recorded a justifiable finding that there was prima facie material to show that the Plaintiff and Defendant Nos.13 to 15 were the legal representatives of deceased Laxmanbhai and Kabliben. Conversely, the learned Judge recorded a prima facie finding that there was no material to show that Defendant Nos.1 to 7 had any relationship with the deceased Laxmanbhai and Kabliben.

16. Mr. Balkrishna Joshi endeavoured to assail this finding on the basis of statements purportedly made by deceased Laxmanbhai and Kabliben that they had no issue. I am afraid to delve into this aspect of the matter at this stage. The findings recorded by the learned Judge on the basis of the documents tendered on behalf of the Plaintiff cannot be said to be unjustifiable.

17. What is of critical significance is the fact that the contesting Defendants' case rests on the grant of occupancy rights in respect of the suit properties in favour of Smt.Dituben under an order dated 6 December 2013. It does not appear to be the case of the Defendants that Defendant Nos.1 to 7 claimed right, title and interest in the suit properties through Laxmanbhai and Kabliben in whose favour the occupancy rights were originally granted. Defendant Nos.1 to 7's claim to title to the suit properties is, thus, traceable to the order dated 6 December 2013, over the existence of which the Plaintiff has succeeded in throwing a cloud of doubt. The claim of the Administration that the file does not contain the original judgment and orders passed

in the said proceedings, which eventually resulted in the order dated 6 December 2013 granting occupancy rights, is required to be seen through this prism.

18. In the aforesaid view of the matter, the learned Judge committed no error in recording a finding that the Plaintiff had succeeded in making out a prima facie case. Restraining the Defendants from alienating, disposing or otherwise creating third party rights in the suit properties also cannot be faulted at, as the Plaintiff would suffer an irreparable loss in the event third party rights are created in the suit properties and the subject matter of the suit is further alienated or disposed of. However, I find substance in the submission of Mr. P.N.Joshi that the impugned order to the extent it restrained the Defendants from changing the nature of the suit properties till the final disposal of the suit, deserves to be interfered with. The said restraint operates rather broadly. In my view, a direction that the Defendants shall not claim any equity in the event the Defendants carry out any development in, or construction over, the suit properties would protect the interest of all the parties.

19. For the foregoing reasons, I am impelled to partly allow the Appeals. Hence, the following order :

ORDER

- (i) The Appeals stand partly allowed.
- (ii) The order restraining the Defendants or their agents/assigns from disposing, alienating or otherwise creating third party interest in the suit properties till the

disposal of the suit stands affirmed.

(iii) The impugned order to the extent it restrains the Defendants from changing the nature of the suit properties till the final disposal of the suit, stands set aside.

(iv) The Defendants shall not, however, claim any equity in the event they change the nature of the suit properties or carry out any development in, or construction over, the suit properties.

(v) Hearing of the Suit stands expedited.

(vi) The learned Civil Judge is requested to make an endeavour to dispose of the suit as expeditiously as possible and preferably within a period of one year from the date of communication of this order.

(vii) In view of the disposal of the Appeals, the Interim Applications/Civil Application(s) do(es) not survive and the same stand(s) disposed.

(viii) No order as to costs.

(N.J.JAMADAR, J.)