

Amol

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

**FIRST APPEAL NO. 2951 OF 2006**

Shri Hiralal Mishramal Solanki

Age : 54 years, Occu : Business &  
Advocate.,

R/o: at Suparshwanath Co-op. Hsg. Soc.,  
Building No.6, Flat No. 8, Market Yard  
Road, Pune.

...Appellant

V/s.

1. M/s. Kolte Patil Developers Ltd.

A Public Limited Company incorporated  
Under Indian Companies Act, 1956,  
Having its office at F.P. No. 493, Patil  
Plaza, Parvati, Opp. To Mitramandal, Pune.

2. Shri Rajesh Aniruddha Patil

Age : 43, years, Occu : Business,  
Residing at C/o. No.1 above,  
Director of No.1.

... Respondents

...

Mr. Surel S. Shah for Appellant.

None for Respondent.

...

**CORAM : K. R. SHRIRAM &  
RAJESH S PATIL, JJ.**

**DATED : 5<sup>th</sup> JANUARY 2023**

**Oral Judgment (Per Rajesh S Patil, J):**

1. Heard Mr. Surel Shah for Appellant. None present for Respondent though served.

2. This First Appeal is filed by Appellant (Original Plaintiff) challenging the judgment and decree dated 30<sup>th</sup> September, 2005 passed in Special Civil Suit No. 491 of 1999, by the Learned 8<sup>th</sup> Ad-hoc Additional District Judge, Pune. For convenience we retain the description of the parties as was in the suit.

3. Plaintiff had filed a Special Civil Suit No. 491 of 1999 wherein he stated in the cause title and in the plaint that his occupation is business and he is also an Advocate. The suit was filed against the developer and its director (Respondent No.1 and Respondent No.2) for recovery of a sum of Rs. 2,62,00,000/- and also to receive built up area of 11,400 sq. ft.

4. It is pleaded in the Plaint that Plaintiff is an Advocate of a trust known as 'Jamnabai Narayanji Dwarkadas Trust'. The trust is original owner of land bearing Plot No. 181, admeasuring 29589 sq.meters situated at Boat Club, Sangamwadi, Pune (herein after referred as "suit land"). The original owner/trust was interested in disposing of the suit land or to develop the same. Plaintiff was known to Defendant No.2, who was in the business of development of properties. Defendant No.2 hence, contacted plaintiff as he needed land for development. Plaintiff in turn alleges in the plaint that he offered his services of clearing the land, viz., by obtaining ULC certificate and also getting the occupants of the

suit land, some of whom were legal occupants and others unauthorized occupants, vacate the suit land.

5. Plaintiff further alleges that these services of Plaintiff was accepted by Defendants and hence defendants were supposed to pay Plaintiff a sum of Rs.2,62,00,000/- with interest along with built up area of 11,400 sq.ft., as per the terms of agreement. As defendants refused to pay plaintiff, the present suit for recovery was filed before the learned District Judge, Pune. Defendants filed written statement, denying the contents of the plaint and contested the matter.

6. Plaintiff examined in all seven witnesses including himself. All seven witnesses were cross examined by Defendants through their advocate. Thereafter, the matter was heard and by a reasoned order the suit was dismissed. The present first appeal challenging the judgment and order dated 30<sup>th</sup> September, 2005, was admitted on 20<sup>th</sup> June 2006 and was listed for final hearing. Mr. Surel Shah appeared for Plaintiff-Appellant. However, none appeared for respondent. Hence, without assistance from respondent /original defendant, this first appeal is heard.

7. Counsel for Appellant/Plaintiff, Mr. Surel Shah argued that two agreements dated 20<sup>th</sup> June, 1995 and the third agreement dated 14<sup>th</sup> August, 1997, were proved by leading secondary evidence and the same were marked as Exhibits by Trial Court. Plaintiff examined seven

witnesses including notary who had notarized the photo copies of these agreements. Therefore, learned Trial Court should have believed the evidence lead by Plaintiff and should have decreed the suit. Mr. Surel Shah further argued that there was no reason for Trial Court to disbelieve the evidence of tenants. It was further argued by Mr. Surel Shah that there was no case of novation pleaded, however the trial court has also considered novation while dismissing the suit. He further argued that the issue of limitation was never raised by defendants in Trial Court. He further added that the findings recorded are perverse. Hence, according to him the First appeal should be allowed and the judgment and decree of learned Trial Court should be set aside.

8. We have minutely gone through the pleadings and evidence on record. Plaintiff has claimed himself to be an Advocate and businessman. Plaintiff has specifically claimed that he was an Advocate for the trust, who were owners of the “suit land”. Accordingly to Plaintiff, Defendants are developers who had assigned him the work of evicting the tenants and illegal occupants from the suit land, and also to obtain exemption certificate for the suit land from competent authority under the Urban Land Ceiling Act. However, there is no explanation from the Plaintiff as to how, he as an Advocate of the vendor - Trust, could take over the assignment from the purchaser of the suit land, of liaising with

occupants of suit land, and further make alleged payments to occupants for vacating the suit land. Bar council of India Rules section VII restricts advocate from engaging in any business.

9. Further, Suit is based on documents in the form of written agreements. Defendants have denied execution of two agreements both dated 20/6/1995. Plaintiff had produced photocopies of these agreements and has alleged that the original documents are in custody of Defendants. Plaintiff has not given any explanation how these documents are in custody of defendants. These documents are not proved.

10. According, to Plaintiff as per the Agreement dated 20/6/1995, four months time was granted to complete the work assigned to him. The agreement states in case Plaintiff fails to complete the work within four months, then defendants were free to deal with these matters on their own and plaintiff was to get nothing as mentioned in the alleged agreements.

11. Even if the case of Plaintiff is believed and the term agreements dated 20/6/1995 are taken as proved, till, admittedly the work of obtaining ULC certificate and vacating the occupants from suit land was not completed within four months.

12. Plaintiff was not able to prove that he had taken steps to obtain the Urban Land Ceiling certificate. Plaintiff was also not able to prove that there were 30 tenants on the suit land, and he had taken steps to evict them from the suit land. Plaintiff had examined three witnesses who claimed to be tenants; however no evidence was led to prove that they were the tenants on the suit land.

13. As per Plaintiff's case after the first two agreements dated 20/6/1995, a fresh agreement dated 14/8/1997 was entered into between Plaintiff and Defendants. However Plaintiff has sought reliefs even under the first two agreements. According to us once a new agreement dated 14/8/ 1997 was entered into for the same transaction by principle of Novation, Plaintiff was barred from seeking reliefs for enforcement of agreements dated 20/6/1995.

14. Further there is no explanation from the Plaintiff, as to why he didn't utilise the alleged security cheque when according to Plaintiff, huge sums were due from Defendants. It is difficult to believe that a practising advocate would spend huge sums of money from his pocket for getting occupants from the suit land vacated/evicted.

15. In the circumstances, no case is made out by Plaintiff/Appellant to interfere with the impugned Judgment and Decree dated 30/9/2005, passed by learned District Judge Pune.

16. Appeal dismissed.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)