

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.293 OF 2023
WITH
INTERIM APPLICATION (ST) NO.10148 OF 2023**

M/s. Vazarkar Associate & Anr. ... Appellants
versus
Umesh Manoharrao Wakode and Ors. ... Respondents

Mr. Avinash B. Avhad, for Appellant.
Ms. Smita Tondwalkar, for MCGM.

**CORAM: N.J.JAMADAR, J.
DATE : 19 APRIL 2023**

P.C.

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 3 March 2023 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.3975 of 2022 in L.C.Suit No.2336 of 2022, whereby the Notice of Motion taken out by the Appellants-Plaintiffs to restrain Defendant No.15 from carrying out any construction or change the nature of the suit property and restrain the Municipal Corporation – Defendant Nos.16 and 17 from granting approval to Defendant No.15 to carry out any construction in the suit property came to be rejected.
3. Defendant Nos.5 to 13, who are the owners of land bearing CTS No.1279, Survey No.1000, admeasuring 1568 sq. mtrs., situated at Village Mulund, Mumbai Suburban District (suit property), have entered into a Development Agreement in respect of the suit property in favour of Defendant No.1. Under the

Development Agreement, consideration of Rs.7.30 Crores was agreed to be paid to the owners. Defendant No.1 parted with part consideration at the time of execution of the Development Agreement on 31 March 2015. Later on, Plaintiff No.2 and Defendant Nos.1 to 4 executed a Partnership Deed. Plaintiff No.2 and Defendant Nos.2 to 4 invested a capital of Rs.3 Crores. A Memorandum of Understanding (MOU) came to be executed on 30 June 2015 between Plaintiff No.2, Defendant Nos.2 to 4 and Defendant no.1, in the capacity of the power of attorney of Defendant Nos.5 to 13. Under the said MOU, it was decided that Plaintiff No.2 and Defendant Nos.2 to 4 will have 12.5% share each in the profits and losses of the Plaintiff No.1 Firm.

4. As things did not move as expected, Plaintiff No.2 visited the suit property and noticed that the structure standing thereon was being demolished. Upon enquiry, it transpired that Defendant Nos.5 to 13 surreptitiously cancelled the power of attorney executed in favour of Defendant No.1 and executed a Sale Deed of the suit property in favour of Defendant No.15. Plaintiffs allege, Defendant No.15 brazenly commenced construction at the suit property.

5. The Plaintiffs thus instituted a suit and took out a Notice of Motion therein to restrain Defendant No.15 from carrying out construction at the suit property. By the impugned order, the learned Judge, City Civil Court, rejected the Notice of Motion holding that there was no privity of contract between the Plaintiff and Defendant Nos.5 to 13, the owners of the suit property. Moreover, the MOU

executed between the Plaintiffs, Defendant Nos.2 to 4 and Defendant No.1, not being a registered document, would not affect the suit property. It was further noted that a Suit was instituted against Defendant No.1, being Special Summary Suit No.36 of 2022, wherein Plaintiff No.2 claimed to have advanced money to the Defendant No.1. Noticing apparent inconsistency in the stand of the Plaintiffs, the learned Judge declined to exercise the discretion in favour of the Plaintiffs.

6. Mr. Avhad, learned Counsel for the Appellants, would urge that the learned Judge committed an error in declining to exercise discretion in favour of the Plaintiffs despite a prima facie case having been made out. It was urged that under the Development Agreement, Defendant No.1 had authority to enter into a partnership with other parties to develop the suit property. MOU came to be executed in pursuance of the said authority. Thus, the MOU could not have been discarded for non-registration. Since the MOU was executed on the strength of the power of attorney executed by the owners of the suit property, the learned Judge was not justified in rejecting the application as with full development of the suit property, the situation would become irreversible to the grave prejudice of the Plaintiffs, urged Mr Avhad.

7. I find it difficult to accede to the aforesaid submissions. First and foremost, prima facie, there is no privity of contract between the Plaintiffs and Defendant Nos.5 to 13, the owners of the suit property and the transferors of the

Defendant No.15. It is not the case that Defendant Nos.5 to 13 executed the Development Agreement in favour of the Plaintiffs. Even if the case of the Plaintiffs is taken at par, the rights of the Plaintiffs would emanate from the MOU executed by and between Defendant No.1 and the Plaintiffs. In that event, Plaintiffs can have their remedies only against Defendant No.1.

8. Moreover, the stand of the Plaintiffs as regards the jural relationship with Defendant No.1 was shown to be inconsistent, in the least. That further impairs the case of the Plaintiffs that Defendant No.1 had executed a MOU in the capacity of the power of attorney of the owners of the suit property. At any rate, the MOU does not create an enforceable obligation qua Defendant Nos.5 to 13.

9. In the aforesaid view of the matter, the learned Judge, City Civil Court committed no error in declining to exercise discretion in favour of the Plaintiffs. Neither a prima facie case was made out. Nor the balance of convenience tilted in favour of the Plaintiffs. In the circumstances of the case, in the event of grant of injunction, Defendant No.15 would suffer an irreparable loss. Thus, no interference is warranted in the discretionary order passed by the trial court.

10. The Appeal, thus, stands dismissed.

11. In view of the dismissal of the Appeal, Interim Application also stands dismissed.

(N.J.JAMADAR, J.)