

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12294 OF 2022

Atur India Pvt Ltd.

...Petitioner.

Versus

Atur Park CHS Ltd & Others.

..Respondents.

Mr. Darshanchandra B. Zaveri for the petitioner.

Ms. Rupali Awati i/b Ms. Divya Yajurvgedi for respondent no. 2.

*Ms. Neha D. Duru i/b Mulla & Mulla & Craige Blunt & Caroe for
respondent no.3.*

Mr. Nitin Deshpande for respondent no. 1.

Mr. Dormaan J. Dalal for respondent no. 4.

Coram : Sharmila U. Deshmukh, J.

Date : July 25, 2023.

P. C. :

1. The petition questions the order dated 29th January 2022 passed in miscellaneous civil appeal No.296 of 2019 rejecting the appeal and confirming the order of trial court dated 31st August 2017, whereby the Petitioner is restrained from creating any third party interest or making any alteration in the suit property till the disposal of the suit. The petitioner is original defendant No. 3 in special civil suit No.756 of 2001

preferred by respondent No.1 herein. For the sake of convenience, the parties are referred to by their status before the trial court.

2. Brief facts as regards the dispute between the parties are as under :

[a] Special civil suit No.756 of 2001 was instituted by the plaintiff society seeking specific performance of the individual agreements entered into by the defendant no.1 with the members of plaintiff-society and to convey the land described in paragraph No.1(d) to the plaintiff-society and for a declaration that the deed of conveyance dated 22nd September 2015 registered between defendant Nos.2 and 3 with the defendant No.1 being confirming party is sham, bogus and void abinitio document and is not binding on the plaintiff. The suit also challenges the conveyance executed between defendant Nos. 1 and 2 and defendant No. 5 and seeks declaration that the consent terms dated 22nd January 2018 entered into between defendant Nos.1, 2 and 5 are

not binding on the plaintiff. The suit land is described in paragraph 1(d) of the plaint as under :

“All that piece and parcel of land situated at Pune & Part of City Survey Nos. 11/1/A, 11/1/B and 11/1/D, Koregaon Road and part of corresponding survey Nos. 477/A, 477/B, 478B, 478C, 478D/1, 478D/2 and known as 5 Koregaon Road, measuring 24,768.26 sq. mtrs and bounded as under;

On or towards North : Part of City Survey No. 11/1/B.
On or towards West : Naylor Road.
On or towards East : Koregaon Road.
On or towards South : Central Railway Line.”

- [b] The case of the plaintiff is as under :
- (i) That defendant No. 2 is the owner of the suit property and a development agreement came to be entered into between defendant No. 1 and defendant No. 2 on 19th November 1987 pursuant to which defendant No. 1 floated a project of 14 buildings along with other amenities on the property described in paragraph 1 of the plaint, called Atur Park. It is stated that various members of the society entered into independent agreements with the defendant No. 1 for the purchase of individual units and the construction of the building was completed and possession was handed over in the year 1993-94. It is stated that the defendant had agreed to form one single society consisting of 14 buildings on the

land mentioned but the defendant intentionally formed 3 separate societies that is Atur Park Co-operative Housing Society No. 1 consisting of building Nos. 2, 5, 6 and 7. Atur Park Cooperative housing society No.2 consisting of building Nos.1, 3, 4, 8 and 9 and Atur park cooperative housing society No.3 consisting of building Nos.10, 11, 12, 14 and 15, and, the other amenities being in common for all the 3 societies and being used by the members of 3 societies. It is stated that all members of the Society have made payments under their individual agreements and have also paid towards the cost of the land.

[ii] As the land was not conveyed to the society, criminal complaint came to be filed against the defendant under various provisions of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. The defendant was developing a piece of land behind the plaintiff-society and defendant did not create the boundary wall on the southern portion intentionally in order to impose the residents of the new buildings on

the plaintiff-society.

[iii] During the pendency of the proceedings, defendant No.3 filed special civil suit No. 1651 of 2010 against defendant Nos. 1 and 2 seeking specific performance of agreement to sell and execution of sale deed. The suit property claimed in that suit overlapped the suit property in special civil suit No. 756 of 2001 to the extent of area of 398.74 square meters and as such the plaintiff filed an application for impleadment under order 1 rule 10 of CPC which came to be rejected however leave was given to the plaintiff for clubbing special civil suit No. 1651 of 2010 with special civil suit No. 756 of 2001. In special civil suit No. 1651 of 2010, defendant No. 3, who was the plaintiff in that suit, preferred a pursis and unconditionally withdrew the suit. Defendant Nos. 1 to 3 in collusion with each other executed a deed of conveyance dated 22nd September 2015 whereby defendant No. 2 conveyed the property admeasuring 398.74 square metres out of CTS No. 11/1/B, which is part of the suit property mentioned in paragraph 1(d), to defendant No. 3.

[iv] It is stated that the plaintiff was not made party to writ petition No. 10484 of 2016 and the consent terms were filed therein on 22nd January 2018 by which the petition has been disposed off and defendant Nos.1, 2 and 5 entered into the consent terms in collusion with each other and the same are not binding on the plaintiff. Defendant No.1 executed a registered conveyance deed dated 28 July 2018 and has conveyed the property admeasuring 8,177 square meters out of CTS No. 11/1 to defendant No. 5.

[c] On 20th June, 2009, Defendant No.3 filed its written statement stating that defendant No. 3 is claiming rights on the plot of land admeasuring 3588.26 square metres forming part of CTS No.11/1/B on the basis of agreement dated 12th January 1989 and plot of land admeasuring 398.74 square meters forming part of CTS No.11/1/B on the basis of supplementary agreement dated 21st September 1992 and that only a formality of conveyance remains.

- [d] In view of the written statement filed by the Defendant No.3, on 29th April 2010 the plaintiff filed amendment application to incorporate pleadings that the plaintiff is not aware about any agreement entered into between defendant No. 1 and defendant No. 3, which came to be allowed.
- [e] On 6th August 2012 the plaintiff-society filed an application for the amendment of plaint to change the description of property to include paragraph 1(a), 1(b), 1(c) and 1(d). In view of the amendment carried out additional written statement was filed by the Defendant No.1 contending that as regards paragraph 1(c) the area is 7,112 square meters and as regards paragraph 1(d), Defendant No 2 has conveyed 3,300 to Mrs. Amita Mansukhani and the area admeasuring 398.7 square meters abutting the land described in paragraph 1(b) is part of land bearing CTS NO 11/1/B, which is agreed to be sold to Defendant No 3. It was further contended that Atur Park Co-operative Housing Society is constructed on portion admeasuring 1742.37 square

meters out of property described in paragraph 1(d) of the plaint and that Society is entitled to 18,693 square meters.

[f] On 20th July, 2013, the plaintiff filed another application to implead Mrs. Amita Kishore Mansukhani as party defendant and sought to incorporate pleadings as regards the conveyance executed by Defendant No 1 in favour of Mrs. Amita Mansukhani of the part of land at CTS No 11/1/C and to seek relief of demolition of the constructed building No.21 on part of CTS No.11/1/C along with commercial premises building thereon and to convey the open land to the plaintiff which came to be allowed. As against which respondent No. 4 filed writ petition before this court which set aside the order and the application for amendment was restored to the file.

[g] On 6th February 2016 the plaintiff filed another amendment application to incorporate challenge to the consent terms and deed of conveyance in respect of the land bearing CTS No. 11/1/C executed in favour of Mrs.

Amita Kishore Mansukhani.

- [h] On 22nd April 2016 the plaintiff filed yet another amendment application for adding paragraph Nos.18A and 18B to challenge the deed of conveyance in respect of the plot of land admeasuring 398.74 square meters forming part of CTS No. 11/1/B executed in favour of the petitioner.
- [i] On the same day that is on 22nd April 2016 the plaintiff filed an interim application seeking temporary injunction below exhibit 169 from creating third party rights in respect of the plot of land admeasuring 398.74 square meters forming part of land bearing CTS No. 11/1/B to which reply was filed by the defendant No 3 on 15th June, 2016.
- [j] On 19th June 2017 the petitioners filed additional written statement. In the interregnum on 23rd December 2016 the plaintiff's application below exhibit 106 was rejected in respect of the land bearing CTS No.11/1/C which came

to be challenged by way of writ petition No. 2312 of 2018.

[k] On 12th January 2017 the plaintiffs amendment application seeking to challenge the deed of conveyance in respect of the disputed area below exhibit 171 came to be allowed which came to be challenged by the defendants by way of writ petition No. 6624 of 2017.

[l] Vide order dated 31st August 2017 the application for temporary injunction came to be allowed by the trial court which came to be challenged by defendant No. 3 by filing miscellaneous civil appeal before the District Court.

[m] On 28th July 2018 the owners executed a deed of conveyance in respect of Atur park cooperative housing society No. 4 in respect of the plot of land admeasuring 8177 square meters bearing CTS No. 11/1/A which was challenged by the plaintiff by yet another amendment application at exhibit 244 and thereby Atur Co-operative

housing society No. 4 was impleaded as defendant No. 5.

[n] On 29th January 2022 the appellate court dismissed the defendant's appeal confirming the order of the trial court, giving rise to the present petition.

4. Heard Mr. Zaveri, learned counsel appearing for for the petitioner, Ms. Rupali Awati, learned counsel appearing for respondent no.2, Ms. Neha D. Duru, learned counsel appearing for respondent no.3, Mr. Nitin Deshpande, learned counsel appearing for respondent no.1 and Mr. Dormaan J. Dalal, learned counsel appearing for respondent no.4.

5. Learned counsel appearing for the petitioner has taken this court through the averments made in the plaint and has pointed out that the suit property has been described in paragraph 1(d) as piece and parcel of land bearing CTS No. 11/1/A, 11/1/B and 11/1/C. He pointed out that the boundaries described in the plaint indicates that on or towards the north is part of CTS No. 11/1/B. He would further submit that by two sale deeds, defendant No.3 has purchased plot of land

admeasuring 3588.26 square metres and plot of land admeasuring 398.74 square metres. He would submit that the Society of 14 buildings of the plaintiff is constructed on the plot of land bearing CTS No.11/1/A. He would contend that the disputed portion is the land admeasuring 398.74 square metres which forms part of CTS No. 11/1/B and as such the plaintiff has no right in the said property. He would urge that it was the consistent case of the Plaintiffs that the disputed portion falls in CTS No 11/1/B and for the first time in the appeal proceedings, the Plaintiff changed its stand that the disputed area is falling in CTS No 11/1/A. According to him, considering the stand taken by the Plaintiff that the disputed portion is on CTS No 11/1/A, whereas the indenture executed clearly shows that the same is on CTS NO 11/1/B, the Plaintiff has been unable to identify the property and as such injunction could not follow. He would further submit that contradictory findings have been arrived at by the Appellate Court.

6. *Per Contra* learned counsel for the plaintiff has supported the impugned order and has pointed out that the suit property which is described in the plaint is land bearing CTS No. 11 / 1 /

A, 11/1/B and 11/1/C admeasuring 24,768.26 square meters. He would further contend that in view of the specific description of the property in the plaint, it cannot be said that the suit property in question is not identifiable. He would further contend that the factual position is that in the construction plan the disputed area is shown as a swimming pool area and the appellate court has on the basis of the construction plan observed that the area of the swimming pool appears to be part of CTS No.11/1/A. He would further submit that the finding of the appellate court is that the disputed area is distinctly shown in the map and prima facie it appears to be not part of CTS No. 11/1/B, and as such there is triable dispute between the parties as to whether the disputed portion is part of CTS No. 11/1/A or 11/1 / B. He would further submit that in exercise of the powers under Article 227 of the constitution, this court may not disturb the concurrent findings of the trial court and the appellate court.

7. Considered the submissions of the parties and perused the papers and proceedings with the assistance of the learned counsel appearing for the respective parties.

8. The trial court while deciding the application for injunction has observed that there is a dispute pending between the parties in respect of the land admeasuring 398.74 square meters out of the land mentioned in paragraph 1(d) of the plaint and that as per the plaintiff the said land was reserved for swimming pool to be used by the flat purchasers of the plaintiff society. It observed that during the pendency of the proceedings, the conveyance of the year 2015 came to be executed which is not disputed. The trial court held that in view of the subsequent developments, the plaintiff who was asking for the land of 398.74 square metres out of the land mentioned in paragraph 1(d) of the plaint from defendant No. 1 and 2 are now required to claim from defendant No. 3 and if the interim injunction is not granted, then the entire purpose of the suit will be defeated.

9. The appellate court while dismissing the appeal observed that the disputed property is identifiable. As regards the dispute as to whether the portion of land falls in CTS No. 11 / 1 /A or 11 / 1 / B, the appellate court observed that in the notice

issued by the plaintiff, the plaintiff had claimed that 14 buildings had been constructed on CTS No. 11 / 1 /A and that there doesn't seem to be dispute between the parties that the disputed area is given CTS No. 11 / 1 /B and that the suit property is described as CTS No. 11 / 1 /A and 11/1/B and 11/1/C. The appellate court considered that in the construction plan the area of swimming pool is the disputed portion and prima facie the area of swimming pool appears to be the part of CTS No. 11 / 1 /A. The appellate court held that there is triable dispute between the parties as regards where the disputed area falls in CTS No. 11 / 1 /A or 11 / 1 / B and as such upheld the findings of the trial court.

10. The facts which emerge from the material on record is that the defendant No 2 was the owner of the properties described in paragraph 1(a) to 1(d) of the plaint. The defendant No. 1 who was a developer entered into development agreement with defendant No.2 consequent to which the residential project of 14 buildings was implemented and the plaintiff's members have entered into individual agreements with the defendant no.1 for the purchase of the

flats. The possession of the tenements was given in the year 1993-94 and 3 cooperative housing societies were formed, which subsequently merged and the plaintiff society was formed. As the statutory obligation under section 11 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963(MOFA) was not complied with, special civil suit No. 756 of 2001 was instituted seeking the enforcement of the statutory obligations under MOFA.

11. In the present petition, the challenge is to the restraining orders as regards the disputed portion admeasuring 398.74 square meters conveyed in favour of defendant No. 3 by virtue of conveyance deed dated 22nd September 2015. Apart from the rival claims of ownership of the disputed portion there is also dispute as regards whether the disputed portion falls in CTS No 11/1/A or CTS No 11/1/B.

12. The pivotal submissions of the learned counsel for parties centered around the location of the disputed portion. The contention of the learned counsel for Petitioner is that the

buildings of the Plaintiff Society are constructed over land bearing CTS No 11/1/A and that shifting stands have been adopted by the Plaintiff as regards the location of the disputed portion. For that purpose if we take a look at the suit as initially instituted, the suit property was described as land bearing CTS No 11/1, Koregaon Road i.e Survey No 477A, 477B, 478B,478C,478D/1 and 478D/2 admeasuring 31,300 square meters. By virtue of the subsequent amendments, the suit property came to be described as CTS No 11/1/A, 11/1/B and 11/1/C. It is not in dispute that at the time when the residential project was implemented, the construction was on land bearing CTS NO 11/1. The claim of the Plaintiff is based on the individual flat purchasers agreements and perusal of the agreement indicates that the developer had purchased from the owners piece and parcel of land bearing No 5, Koregaon Road, Pune vide agreement dated 19th November, 1987 and on portion of the said land housing scheme is proposed. The agreement also discloses that the flat purchasers had paid the price for purchase of land. It needs to be noted that this agreement did not specify the exact location on CTS No 11/1 on which the housing scheme was implemented. The land is

merely referred to as portion of the land bearing CTS No 11/1. The individual members have not only paid for the purchase of the flat but have also paid the purchase price of the land.

13. Now if we look at the layout plan sanctioned by the Pune Municipal Corporation, which is at Page 328 of the Petition, the layout shows that the same is a revised layout which indicates CTS No 11/1/A, CTS No 11/1/B and CTS No 11/1/C. The buildings are shown in the revised layout as situated on CTS No 11/1/A, the proposed hotel is shown on CTS No 11/1/B and area under shopping reservation is shown as CTS No 11/1/C. The disputed portion admeasuring 398.74 square meters is shown as swimming pool and is located between open space situated on CTS No 11/1/A and the proposed hotel on CTS No 11/1/B. As to whether the residents of the Plaintiff Society prima facie show their entitlement to the disputed portion is the question.

14. As indicated above the individual flat purchaser agreements do not indicate the exact location of CTS No 11/1/A on which the buildings of the Plaintiff Society and the

common amenities areas are situated. No material has been brought on record to demonstrate the actual location of the building and the common amenities areas. The fact remains that the possession of the tenements in the Plaintiff Society had been handed over in the year 1999 and 2000. Considering that the flat purchasers have not only paid for their tenements but also for the land, the area of the portion of land to which the Society is entitled can be ascertained only after evidence has been led.

15. As per the revised layout plan of the year 1994 placed on record, the buildings appears to be constructed on CTS No 11/1/A and the disputed portion appears to be prima facie part of CTS No 11/1/A. The claim of the Defendant No 3 arises from the agreement for sale of the year 1992 and the subsequent conveyance deed executed in the year 2015 by the Defendant No 2 in its favour conveying the disputed portion admeasuring 398.74 square meters claiming the same to be the part of subdivided land bearing CTS No. 11/1/B. The recitals of the supplementary agreement dated 21st September, 1992 are that the Defendant No 2 has entered into agreement for sale

with Defendant No 3 in respect of plot admeasuring 3588.26 square meters on north side of the entire land and as per rules of Pune Municipal Corporation open space is required to be retained with the said plot at the time of development and as such there was agreement for sale of additional area of 398.78 square meters being the portion to be retained as open space. Pertinent to note that the agreement for sale of the year 1992 describes the disputed portion as being part of CTS No 11/1.

16. The defendant no.3 claims the disputed portion under the agreement of sale of the year 1992 and the subsequent conveyance deed whereas the society claims the disputed portion under individual flat purchasers agreement. The individual flat purchasers agreement as well as the agreements for sale executed between the Defendant No 2 and 3 will indicate that the disputed portion forms part of CTS No 11/1. As such at this interim stage, prima facie it appears that at the time of execution of the housing scheme as well as at the time of execution of the agreement for sale, the disputed portion was part of CTS No 11/1.

17. It is during the pendency of the proceedings, on the application of Defendant No 2 developer, that the CTS No 11/1 came to be subdivided in three different plots viz CTS No 11/1/A, CTS No.11/1/B and CTS No 11/1/C. Subsequently conveyance has been executed between Defendant No.2 and Defendant No 3 conveying the disputed portion admeasuring 398.74 square meters claiming the same to be the part of subdivided land bearing CTS No. 11/1/B. During the pendency of the proceedings there were various amendment applications filed and by these amendments the plaintiff sought to challenge the subsequent transfers and the conveyance deed executed pending the adjudication of special civil suit No. 756 of 2001. The suit property after amendments has been described in paragraph 1(d) as land admeasuring 24,768.26 square meters bearing CTS No. 11/1/A 11/1/B & 11/1/C.

18. As the residential project was constructed on plot bearing CTS No 11/1, it was expected of the Defendant No 1 developer to bring material on record to demonstrate the area to which the Society is entitled, which will include the land under the buildings as well as the common amenities spaces, which the

Defendant No 1 has failed to do. On the other hand the undisputed position is that the residential project is implemented on CTS No 11/1, which subsequently came to be subdivided in CTS No 11/1/A, CTS No 11/1/B and CTS No 11/1C. The agreement for sale executed with the Defendant No 2 shows that the disputed portion forms part of CTS No 11/1. It is only in the conveyance of the year 2015 that the disputed portion has been shown as CTS No 11/1/B. Considering the position which existed at the time of construction of the housing project as well as at the time of execution of agreement of sale, in my view, prima facie the disputed portion falls in CTS No 11/1 and as such the entitlement of the Society or the defendant no.2 will be decided on the touchstone of evidence at the time of the trial, however the disputed portion needs to be protected so as to not defeat the rights of the Society.

19. The construction plan which is on record indicates that the disputed portion is reserved for swimming pool. Pertinently the communication dated 6th November, 1993 issued by the Pune Municipal Corporation to the Defendant No 3 in context

of the proposed hotel at CTS No 11/1,(which is now sub-divided plot bearing CTS No 11/1/B) states that the open space shown in the plan of the proposed hotel for proposed swimming pool is outside the plot area. From this communication it appears that the plot admeasuring 3588.26 square meters was a separate plot and plot admeasuring 398.74 square meters was separate plot. It was further stated that if the swimming pool is proposed to be used for the proposed hotel, then there is possibility of complaints from the tenements for whose benefit there was open space. Prima facie it appears from this letter that the open space which was sought to be used as swimming pool for the proposed hotel was in fact for the benefit of the tenements constructed

20. Much emphasis has been laid by the learned counsel for Petitioner on the description of the boundary showing that towards north there is part of CTS No. 11 / 1 /B which indicates that the entire portion of CTS No. 11 / 1 / B is not forming part of the suit land. However it is to be noted that the portion of the land admeasuring 3588.26 square meters which forms part of CTS No 11/1/B is situated on the northern side as per the

construction map and as such the description of the boundary on the northern side in paragraph 1(d) of the plaint cannot be inferred to mean that the disputed portion was shown on the northern side as CTS No. 11/1/B.

21. The application seeking temporary injunction in respect of the property admeasuring 398.74 square meters describes the same as CTS No. 11 / 1 / B, correlating it with the property which is described at second schedule to the deed of conveyance dated 22nd September 2015. It is contended that the claim of the Plaintiff is on the entire area of 24,768.26 square meters of the suit property described in paragraph 1(d) and that the conveyed portion of 398.75 square meters forms part of the area of the suit property.

22. In the reply to the application for interim injunction, the defendants had contended that after the order of deemed conveyance passed in favour of Attur park cooperative housing society No. 4 conveying an area of 6,824.97 square meters, the plaintiff-society would be entitled to area admeasuring 20,313.16 square metres which is portion of CTS No. 11/1/A

and the disputed portion being a part of CTS No. 11 / 1 /B, the plaintiff does not have any right to the suit land. As such it appears that the case of the Defendant No 3 is that the Society is entitled to only an area admeasuring 20,313.16 square meters and that the same forms part of CTS No 11/1/A. To substantiate the same, it was expected of the Defendant No 3 to place some material on record to demonstrate the area under the buildings as well as the common amenities.

23. The dispute has been raised as to whether the disputed portion forms part of CTS No 11/1/B or CTS No 11/1/A and the said issue is interlinked with the issue as regards the area of entitlement of the Society, which can be decided only upon evidence being led.

24. For seeking temporary injunction, the Plaintiff has to make out prima facie case and the Court has also to consider the aspect of balance of convenience and irreparable loss. It is not in dispute that at the time of execution of the residential project, the same was implemented on area bearing CTS No 11/1. The construction map on record shows the disputed

portion as open space reserved for swimminig pool and the same is situated between the the plot on which the residential project had been implemented and the plot on which the construction of hotel was proposed. The communication of the Pune Municipal Corporation of the year 1993 indicates that the disputed portion was situated outside the plot where the hotel was proposed and that the open space is for benefit of the constructed tenements. As to whether the same constitutes CTS No 11/1/A or CTS No 11/1/B is a matter which has to be decided at the time of the trial and in my opinion, the shifting stand adopted by the Society cannot be determinative factor to discard the claim of the Society on the disputed portion for the reason that in the plaint the suit property is described in paragraph 1(d) as land bearing CTS No 11/1/A, 11/1/B and 11/1/C. It needs to be noted that the issue of the disputed portion being on CTS No 11/1/A or 11/1/B has arisen in view of the subsequent sub-division of the plots. In my view, taking into consideration the above facts, the Plaintiff has made out prima facie case for grant of injunction.

25. As regards the balance of convenience, it is clear from

the discussion above that the disputed portion was prima facie for the benefit of the constructed tenements. The conveyance deed has been executed during the pendency of the suit in favour of the Defendant No 3, whereas since the year 2001 the Plaintiff has been claiming entitlement to suit land which includes the disputed portion. The balance of convenience is clearly in favour of the Plaintiff and in event the disputed portion is not protected till the hearing and final disposal of the suit, which will decide the entitlement to the disputed portion, irreparable loss will be caused.

26. The purpose of grant of interim relief is to protect the status quo of the suit property. The defendants were well aware of the pendency of the present proceedings in which the conveyance was sought in respect of the property bearing CTS No 11/1/A, 11/1/B and 11/1/C admeasuring 247680.26 square meters. That being so, being fully aware of the pending litigation defendant No. 3 has entered into the deed of conveyance and has now sought to raise the dispute as regards the location of the disputed portion and the Defendant No. 3 has walked into the transaction being fully

aware of the pending litigation and as such no prejudice can be said to be caused to the Defendant No 3 if the interim relief is granted.

27. Considering that there is bonafide dispute about the property in question, the discretion which has been exercised by the trial court as well as by the appellate court in favour of the plaintiff cannot be faulted with.

28. As regards the decision in the matter of ***Union Of India v. N. Murugesan [(2022) 2 SCC 25]***, relied upon by the learned counsel appearing for the petitioner the same was in support of the proposition that the party cannot approbate and reprobate. The same was pressed into service for the reason of shifting stands taken by the society as regards the location of the disputed portion. In my opinion, no fault can be found with the plaintiff society as the plaintiff was not a party to the proceedings of the subdivision of plot and challenge by the society has failed. The fact remains that initially the area on which the project was implemented was land bearing city survey No. 11/1.

29. In that view of the matter there is no merit in the writ petition and as such I am not inclined to exercise the jurisdiction under Article 227 of the constitution of India. Writ petition stands dismissed.

[Sharmila U. Deshmukh, J.]