

VRJ

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

FIRST APPEAL NO.468 OF 2022

Jayaben Ramji Bhai Patharia Since
Deceased Thr. Her Lrs. Kusum Patel &
Ors.

... Appellants

V/s.

Pushpa Harkisan & Ors.

... Respondents

Mr. C.S. Joshi for the appellant.

Mr. R.P. Ojha for the respondent No.13.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 6, 2023

P.C.:

1. The appellant is original plaintiff who filed suit for following reliefs:

“a) It be declared that the Plaintiff is property 1/6th share in the suit property of the deceased Maniben Popat Solanki i.e. the land with structures thereon admeasuring 544 sq. yards bearing Plot No.9 City Survey No.101, 101/1 to 10 of Village: Malad (South), Taluka: Borivali, M.S.D. lying, being and situated at Cross Road No.4, Mamlatdar Wadi, Malad (West), Mumbai-400 064;

b) the Defendants particularly the Defendants No.13 and their respective servants, agents and the person or persons be permanently restrained by an order and injunction of this Honourble Court from using and utilizing the F.S.I. Of 1/6th share of the Plaintiff in the suit property in any manner whatsoever of nature and from entering into and continuing

the construction activities in the suit property in any manner whatsoever of nature i.e. the land with structures thereon admeasuring 544 sq. yards bearing Plot No.9, City Survey No.101, 101/1 to 10 of Village: Malad (South), Taluka: Borivli, M.S.D. lying, being and situated at Cross Road No.4, Mamlatdar Wadi, Malad (West), Mumbai-400 064;

c) the Defendants particularly the Defendants No.13 and their respective servants, agents and the person or persons be permanently restrained by an order and injunction of this Honourable Court from dispossessing and/or disturbing and/or interfering with the peaceful use, occupation and possession of the suit premises and two W.Cs for the use and under the control of Plaintiff more particularly shown in red colour boundry on the Plan Exhibit 'A' to the Plaint i.e. residential room of the Plaintiff with two w.cs., water and electricity supply at Plot No.9 City Survey No.101, 101/1 to 10 of Village: Malad, (South), Taluka: Borivli, M.S.D. lying and being and situated at Cross Road No.4, Mamlatdar Wadi, Malad(West), Mumbai-400 064; otherwise than due process of law.”

2. The Trial Court partly decreed the suit in following terms:

“2. Plaintiff is entitled to 1/6th share in the suit property.

3. Defendants are hereby restrained from disturbing the possession of the plaintiff over the suit property i.e. the structure in her possession and restrained from utilizing her FSI.”

3. According to the learned advocate for the appellants, the defendant No.13 (Developer) has already utilized FSI to the extent of 1/6th share of the plaintiff.

4. Learned advocate for the defendant No.13, on instructions, states that the 1/6th FSI which falls to the share of plaintiff has not been utilized and said FSI is till intact.

5. In that view of the matter, apprehension expressed by the appellant that FSI to the extent of the share of the plaintiff had been utilized by the developer is misplaced. The utilization of FSI to the extent of share of the plaintiff being only question argued, in view of statement of the developer recorded above, nothing remains to be adjudicated in the present appeal.

6. The first appeal is, therefore, disposed of. No costs.

(AMIT BORKAR, J.)