

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

**APPEAL FROM ORDER NO.909 OF 2022
IN
SPECIAL CIVIL SUIT NO.160 OF 2021**

M/s. Shree Siddhi Vinayak Developers & Ors. ... Appellants

versus

M/s.Apana Sai Builders and Developers & Ors. ... Respondents

Mr. Atul Damle Sr.Advocate a/w. Mr.Ramesh Tripathi, Mr.Sagar Nikambe & Kshitija Chalke & Mr.A.N.Upadhyay Advocate i/by Ramesh Tripathi & Associates, for Appellants.

Mr. Kartik Vig Advocate for Respondent Nos.6 to 26.

Mr. Anil D'souza a/w. Mr.Ernest Tuscano & Mr.Valentine Mascarenhas for Respondent Nos. 1, 2 to 4.

CORAM : N.J.JAMADAR, J.

RESERVED ON : 8th March 2023

PRONOUNCED ON : 5th June 2023

JUDGMENT :

1. This appeal is directed against an order dated 21/07/2022 passed by learned Civil Judge Senior Division, Vasai on an application for temporary injunction (Exhibit 5) in Special Civil Suit No.160/2021, whereby the application preferred by the Appellants/Plaintiffs to restrain the Respondents/Defendants from raising any construction over the land bearing Survey No. 145, Hissa No.2 admeasuring 3790

sq.mtrs situated at Village Nilemore, Taluka Vasai (the suit land) and also from dealing with the suit land or any part thereof and shops constructed thereon and for allied temporary reliefs, came to be rejected.

2. For the sake of convenience and clarity the parties are hereinafter referred to in the capacity in which they are arrayed before the Civil Court.

3. Background facts leading to this appeal can be stated in brief as under:-

3.1 M/s. Shree Siddhivinayak Developers (Plaintiff No.1) is a registered partnership Firm, Plaintiff Nos.2 to 4 are its partners, Defendant No. 27 is an expelled partner of Plaintiff No.1. Under a registered Sale Deed dated 05/10/2012, the Plaintiff had purchased the suit land for a consideration of Rs.1,50,00,000/- (Rs.One Crore Fifty Lakhs) from Defendant No.1 to 5. A sum of Rs.1,30,00,000/- (Rs.One Crore Thirty Lakhs) was paid thereunder. The balance amount of Rs.20,00,000/- was to be paid upon mutation of the name of Plaintiff to the suit land. No steps were taken by the Defendant No.1 to 5 to mutate the name of the Plaintiff to the suit land and receive balance

consideration.

3.2 In the month of July 2021 when the Plaintiffs moved to the Revenue Authorities to mutate the name of the Plaintiffs to the suit land, the Defendant Nos.2 to 5 raised an objection. Thereupon, it transpired that the Defendant No.1 to 5 had sold suit land to the Plaintiffs by suppressing material facts including development carried out at the suit land under the development permission granted by the Competent Planning Authority from time to time, the last being 19/03/2021. Upon further inquiry the Plaintiff noticed that a building comprising ground plus 7 floors was erected at the suit land. It further transpired that the Defendant No.27 in connivance with Defendant No.1 to 5 executed a forged and fabricated Cancellation Deed dated 27/08/2014, purporting to Cancel the Sale dated 05/10/2012 and subsequently executed registered Confirmation Deed on 06/09/2021.

3.3 The Plaintiffs were thus constrained to initiate action against Defendant No.27 and expel him from the Plaintiff No.1 Firm vide Notice dated 01/09/2021, followed by a Public Notice dated 29/06/2022. Plaintiffs also approached the Revenue and Police Authorities. During the course of investigation by Police it was revealed

that the Cancellation Deed was not at all Notarized before the named Notary and not witnessed by the person before whom, it purports to have been executed. Realising the fraud practiced by Defendant No.1 to 5 in connivance with Defendant No.27, plaintiff instituted the suit for declaration and injunctive reliefs.

3.4 In the suit the plaintiff took out an application for temporary injunction. The application was resisted by Defendant No.1 to 4 and Defendant No.6 to 26, who came to be subsequently impleaded as the persons who claimed to be original occupants of structures standing on the suit land.

4. By the impugned order learned Civil Judge was persuaded to reject the application holding, inter alia, that the Plaintiffs failed to make out a prima facie case and in the circumstances of the case balance of convenience would tilt in favour of the Defendants and eventually the Defendant Nos. 6 to 26, would suffer irreparable loss in the event injunction is granted. The facts that there was inaction on the part of the Plaintiff from 2012 to 2021 and the material on record indicated that the Plaintiffs were aware about the development over the suit land and had, in fact, constructed a portion thereon and also

received consideration from the occupants, were arrayed against the Plaintiffs

5. Mr.Damle the learned Counsel for the Appellants would urge that the learned Civil Judge misdirected himself in declining to grant injunction in the face of indisputable position that under the Sale deed title to the suit land had passed to the Plaintiffs. A duly executed and registered Sale Deed could not have been unilaterally cancelled by Defendant No.27, under a forged and fabricated instrument. The subsequent registration of the Deed of Confirmation in the year 2021 is of no avail to clothe legality and validity to the Deed of Cancellation dated 27/08/2014. These vital facts were not properly and adequately considered by the learned Civil Judge, urged Mr.Damle.

6. As against this, Mr.Anil D'souza learned Counsel for Respondent Nos. 1, 2 and 4 and Mr.Kartik Vig for Respondent Nos.6 to 26 supported the impugned order. It was submitted that the Plaintiffs have approached the Court by suppressing facts which could not have been suppressed and that too after almost 10 years of initial transaction between the Plaintiffs and Defendant Nos. 1 to 5. Thus, the learned Civil Judge correctly exercised the discretion not to grant temporary

injunction.

7. It is interesting to note that the Plaintiffs approached the Court with a plain and simple case that the Plaintiffs had acquired the suit land under a registered Conveyance Deed dated 05/10/2012, substantial consideration thereunder was parted with and only a part of the consideration was to be paid after mutation of the Plaintiffs name to the record of right and at that stage the dispute arose between the Plaintiffs and Defendant Nos. 1 to 5. In the wake of the dispute, the Plaintiffs learnt about alleged suppression of facts and fraud by Defendant Nos. 1 to 5.

8. The hard facts of the case which prima facie emerge, however, run counter to the aforesaid version of the Plaintiffs. Undoubtedly, the aspect as to whether the Plaintiffs, as alleged by the Defendants, had carried out some development over the suit land and later on abandoned the project after receiving consideration from some of the original occupants of the structures, which were existing on the suit land, is a matter for evidence and trial. However, at this stage the attendant circumstances cannot be lost sight of.

9. A delay of almost 9 years in asserting the Plaintiffs rights as the purchaser of the suit land cannot be said to be natural by any standard. It defies comprehension that the Defendant Nos. 1 to 5 could carry out development over the suit land by obtaining permissions from the Planning Authority, right from 2008 upto March 2021. Likewise Plaintiffs claim that they were unaware of the development over the suit land all these years is required to be accepted with a pinch of salt.

10. In the context of the aforesaid stoic silence on the part of the Plaintiff the defence sought to be put forth by the Defendant Nos. 6 to 26, deserves to be noted. It is case of the Defendant Nos. 6 to 26 that there were old buildings having A to H Wings, known as “Apna Awas” on the suit land consisting of 96 tenements. Defendant Nos. 6 to 26 are the original occupants of those tenements. Development Agreement was initially executed in favour of Defendant No.1. Building permissions were obtained. As the Defendant No.1 found it onerous to redevelop the property, agreements were executed by Defendant No.1 with the Plaintiffs. On the strength of the said understanding the Plaintiffs executed redevelopment work to the plinth level and thereafter left the project incomplete. Hence, the agreement between the Plaintiff and Defendant No.1 came to be cancelled and Defendant No.1 started

redevelopment on its own. Defendant No.1 has already constructed 50 units and delivered possession thereof. Rest of the development is underway. The original owners/occupants who are yet not allotted the units in the redeveloped buildings are still residing in rented premises.

11. At this stage the material on record prima facie lends support to the aforesaid version of Defendant Nos. 6 to 26. Even if the allegations and counter allegations of the Plaintiff and Defendant No.1 to 5 and Defendant No.27 are deferred for consideration to the trial, at this stage, the aforesaid case of the Defendant No.6 to 26 and the substantial development at the suit land, significantly bear upon the grant of temporary injunction. From the own showing of the Plaintiffs a 7 storied building has been constructed at the suit land. It is averred in the plaint that the Plaintiffs learnt that the defendants have sold near about 100 flats and shops, out of the buildings constructed on Part B shown in the map annexed to the plaint.

12. It would be difficult to believe that development of such magnitude could have been carried out sans Plaintiffs knowledge. An order restraining the Defendants from carrying out further constructions and/or dealing with the units constructed at the suit

property would certainly cause irreparable loss to the original owners/occupants for whom the property is being redeveloped.

13. The learned Civil Judge, in my view, correctly appreciated the absence of prima facie case in favour of the Plaintiffs and the elements of balance of convenience and irreparable loss. The exercise of discretion by learned Civil Judge, in the facts of the case, is not open for correction in exercise of limited appellate jurisdiction. Thus, the appeal fails.

14. Hence, following order:

ORDER

1. The Appeal stands dismissed with costs.
2. In view of the dismissal of the Appeal the Interim Application also stands dismissed.

(N.J.JAMADAR, J.)