

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 863 OF 2023

WITH

INTERIM APPLICATION NO. 16448 OF 2023

M/s. Shreeram Enerprises

...Appellants

Orig. Plaintiffs

V/s.

Mr. Lakhu Padu Mhatre

...Respondents/.

Orig. Defendants.

Mr. Vineet Naik, Senior Advocate with Mr. Sunil Lahane, Ms. Rachana Karad, Ms. Mekhala More i/by. The Juris Partners, for the Appellant.

Mr. Sanjiv Sawant a/w. Ms. Bhakti Wast i/by. Mr. Abhishek Deshmukh for Respondent Nos.5 to 13.

Mr. Ashish Gaikwad a/w. Mr. Bhavand R. Khichi-Natuskar a/w. Mr. Anirudh R. Rote a/w. Ms. Anjali Kolapkar, for Respondent No. 16.

Mr. Sachin Gite for Respondent Nos.17 and 18.

Mr. Satyajeet Rajeshirke i/by. Mr. Sanjay Patil, for Respondent Nos.14 and 15.

CORAM : SANDEEP V. MARNE, J.

DATED : 20 DECEMBER 2023.

P.C. :

- 1) ***Admit.*** With the consent of the learned counsel appearing for the parties, the Appeal is taken up for hearing forthwith.
- 2) The challenge in the present Appeal is to the Order dated 28 August 2023 passed by the Civil Judge Senior Division, Kalyan partly allowing the application at Exhibit-96 filed by Defendant Nos. 17/1 to 17/3 and 18. The Trial Court has restrained the Plaintiff from developing or creating third party interests in the land admeasuring 9.39 hectares in Survey No.128/1(P) situated on the northern side of Jambhul road, Village Chikloli, Taluka-Ambernath, District-Thane till the disposal of the suit and the counterclaim.
- 3) I have heard Mr. Naik, the learned senior advocate appearing for the Appellants, Mr. Rajeshirke for Respondent Nos.14 and 15, Mr. Sawant for Respondent Nos.5 to 13, Mr. Ashish Gaikwad for Respondent No.16 and Mr. Gite for Respondent Nos.17 and 18.
- 4) After having considered the submissions canvassed by the learned counsel appearing for the parties and on perusal of the Order passed by the Trial Court, it is seen that the Trial Court has granted injunction only in favour of Defendant No.17/1 to 17/3. The claim of Defendant

No.18 for temporary injunction has been rejected. So far as Defendant Nos.17/1 to 17/3 are concerned, their claim in the land at Survey No.128/1(P) is restricted to land admeasuring 80 Ares only. This area of land admeasuring 80 Ares appears to have surfaced after conduct of physical survey by the Deputy Superintendent of Land Records and submission of report by him on 9 August 2011. Otherwise right from the first transaction of 15 May 1957 till conduct of the said survey by DSLR on 9 August 2011, Defendant Nos. 17/1 to 17/3 or their predecessors-in-title were apparently not even aware about existence of any additional area admeasuring 80 Ares forming part of the land at Survey No.128/1.

5) Be that as it may. The endeavor of the Trial Court in passing the Order of the temporary injunction appears to be protection of rights of Defendant Nos.17/1 to 17/3 in respect of the land admeasuring 80 Ares only. There appears to be some contradiction in the findings recorded by the Trial Court in para-14 where it is observed that '*therefore it is difficult to ascertain where 80 Ares is situated*'. As against this finding, the Trial Court has held in para-17 that '*prima-facie it appears that land admeasuring 80 Ares owned by Defendant Nos.17/1 to 17/3 is available on northern side of the road*'. If the Trial Court was not sure about the exact location of the land admeasuring 80 Ares, it is difficult to comprehend the exact basis on which the Trial Court has recorded the finding in para-17 that the land admeasuring 80 Ares is situated on the northern side of the road.

6) It appears that is zeal to protect the interests of Defendant Nos. 17/1 to 17/3 in respect of the land admeasuring 80 Ares, the Trial Court has proceeded to clamp the injunction in respect of the land entire land admeasuring 9.39 hectares in possession of the Plaintiff. In my view, the Trial Court could have balanced the equities especially considering the fact that the development of the land in occupation of the Plaintiff in under progress since the year 2016 and by now construction of 26 buildings is already completed and construction of other 4 buildings in underway. In that view of the mater, the Trial Court has committed an error in granting injunction in respect of the land admeasuring 9.39 hectares. Instead, the Trial Court could have injuncted the Plaintiffs from carrying out construction in respect of the land admeasuring 80 Ares. The Order passed by the Trial Court is thus erroneous and deserves modification.

7) The next issue is about the location of the land admeasuring 80 Ares in which Defendant Nos.17/1 to 17/3 claim interest. Mr. Rajesshirke appearing on behalf of Defendant Nos. 17/1 to 17/3 would submit that the land on north-eastern side of Survey No. 128/1(P) is vacant and unconstructed. Mr. Naik, after taking instructions from his client, would fairly submit that the Plaintiffs are willing to keep the land admeasuring 80 Ares on north-eastern side unencumbered as well as

unconstructed till disposal of the suit. This would obviously be without prejudice to the rights and contentions of the Plaintiffs.

8) Accordingly, I proceed to pass the following order :

- (i) The Order dated 28 August 2023 passed by the Civil Judge Senior Division, Kalyan is set aside.
- (ii) The Plaintiffs shall demarcate the land admeasuring 80 Ares on north-eastern side of the land bearing Survey No.128/1 (P) and shall not cause any construction, nor alienate, transfer or mortgage or create any third party rights in respect of such demarcated land admeasuring 80 Ares during pendency of the suit.
- (iii) An intimation about demarcation of land admeasuring 80 Ares shall be given by the learned counsel appearing for the Appellant to the learned counsel appearing for Defendant Nos. 17/1 to 17/3.
- (iv) It is clarified that there shall be no embargo on the Plaintiff carrying out construction or selling, registering any documents in respect of the balance portion of land except demarcated land admeasuring 80 Ares on north-eastern side of Survey No.128/1 (part).

- (v) All contentions of the parties are left open. The Trial Court shall not be influenced by any of the observations made in the present order while deciding the suit

- 9) With the above observations, the Appeal is **partly allowed and disposed of.**

SANDEEP V. MARNE, J.

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
SAWANT

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