

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

**APPEAL FROM ORDER NO. 769 OF 2024
WITH
INTERIM APPLICATION NO. 14429 OF 2024
IN
APPEAL FROM ORDER NO. 769 OF 2024**

Sujita Narayan Nakhwa And Ors
V/S
Unique Constructions Thr Its Proprietor Mr
Ravindra Baburao Patil

....Appellants

....Respondent

Mr. Pradeep Havnur a/w Mr. Sanjay Kharat, Ms Radhika Samant, Ms Pooja Bhide for the Appellants.
Mr. Roshan Kalyan Karar for the Respondent.

CORAM : M. M. SATHAYE, J.

DATED : 18th NOVEMBER 2024

PC.:

1. Heard learned Counsel for the Appellants/Original Plaintiffs and learned Counsel for the sole Respondent.
2. Perusal of the Complaint in subject matter suit shows that the Plaintiffs are claiming to be co-owners of the subject matter property which is Survey No. 35/3, CTS No. 1153 admeasuring 4.3 gunthas and Survey No. 36/1, CTS No. 1171 admeasuring 7.33 gunthas situated at Village Malvani, Taluka Borivali, Mumbai Suburban District.
3. Learned Counsel for the Appellants have relied upon the genealogy showing that they are claiming through Jamnabai Harichandra Koli, which is

her name after marriage. It is asserted that Appellants' mother's maiden name was Jamnabai Shimgya Koli and she was co-owner in the subject matter property. He relied upon the mutation entry no. 3486, *prima facie* showing the name of Jamnabai Shimgya Koli

4. Perusal of the impugned order shows that ad-interim is refused only on the ground that negative declaration is sought by the Plaintiffs. No consideration of *prima facie* evidence is borne out from the impugned order.

5. Learned Counsel for the Respondent submits that the Respondent is not constructing on the subject matter property at all. At the same time, he however chooses to seriously contest the Appeal on merits too. If the Respondent is not constructing on the subject matter property, apparently he should not have any concern therewith.

6. Perusal of notice reply issued on behalf of the Respondent, dated 03/10/2024 to the Appellant / Plaintiff No. 1, shows that though a stand is taken that the Respondent is not claiming any rights in the subject matter property, it is asserted that 9 persons, who are stated to be owners of the rooms of the Infant Jesus Chawl situated at Bhandarwada, Malvani Village, Marve Road, Malad West, Mumbai-400095 have approached the Respondent for renovation and repair of their rooms. It is neither clear from this reply nor forthcoming from the Respondent, what connects the Respondent with the subject matter property and how the 9 persons mentioned therein are connected with the subject matter property, so as to oppose this appeal. Considering the opposition to the appeal, Respondent is apparently not coming clean.

7. Considering the aforesaid facts and circumstances, arguable case is

made out. Hence, the following order:

- (a) Issue notice to the Respondents, returnable on 17/12/2024. Learned Counsel for the sole Respondent waives service.
- (b) Respondent is restrained by way of ad-interim injunction not to construct anything on the subject matter property as specified in plaint paragraph no. 1 of S. C. Suit No. 2339 of 2024.
- (c) Pendency of this Appeal will not preclude the Trial Court from proceeding with the suit.

(M. M. SATHAYE, J.)