

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

**APPEAL FROM ORDER NO.264 OF 2024
WITH
INTERIM APPLICATION NO.7244 OF 2024
IN
APPEAL FROM ORDER NO.264 OF 2024**

Bhalchandra Vasudev Chaudhari

...Appellant

V/s.

Hemant Ramesh Mhatre and Ors.

...Respondents

Mr. G.S. Godbole, *Senior Advocate i /b. Mr. Ashutosh R. Gole for the Appellant.*

Ms. Swati Sagvekar *for Respondent No.1.*

Mr. Atul Damle, *Senior Advocate i /b. Mr. Yash Dewal for Respondent No.2.*

Mr. Abhijit P. Kulkarni *for Respondent No.4.*

CORAM: SANDEEP V. MARNE, J.

Dated: 2 May 2025.

P.C.:

1) The Appeal is filed challenging order dated 24 January 2024 passed by the Civil Judge, Senior Division, Vasai, rejecting application for temporary injunction at Exhibit-5 in Special Civil Suit No.220 of 2023.

2) I have heard Mr. Godbole, the learned senior advocate appearing for the Appellant-Plaintiff, Ms. Sagvekar, the learned counsel appearing for Respondent No.1, Mr. Damle, the learned senior advocate appearing for Respondent No.2 and Mr. Kulkarni, the learned counsel appearing for Respondent No.4. I have considered the submissions canvassed by the learned counsel appearing for the parties and gone through the findings recorded by the Trial Court while passing impugned order dated 24 January 2024 as well as the relevant documents placed on record alongwith the memo of the appeal.

3) It appears that the Plaintiff has filed the Suit for securing his 33% right in the constructed area on the suit property. One of the alleged rights of the Plaintiff flowing through the supplementary Deed of Conveyance dated 22 May 2015 is 50 flats described in Annexure to the said Deed. Respondent Nos.1 and 2 have filed affidavits-in-reply to the appeal. In his affidavit, Respondent No.1 has contended as under:-

Furthermore, third party rights have already been created and inventory, except the 50 flats mentioned in the Supplementary Deed have been sold. The Respondent No.2, to show its bonafide, has kept the 50 flats unsold, till the disposal of the said suit filed by the Appellant.

4) Similarly, in the affidavit filed on behalf of Respondent No.2 following averment is made :-

Furthermore, third party rights have already been created and inventory, except the 50 flats mentioned in the Supplementary

Deed have been sold. This Respondent, in order to show its bonafide, has kept the 50 flats unsold, till disposal of the said suit filed by the Appellant.

5) Thus, both Respondent Nos.1 and 2 have made statements on oath that they are yet to create any third party rights in respect of the 50 flats and they have also undertaken not to do so till disposal of the suit.

6) Mr. Damle and Mr. Kulkarni would confirm the position that 50 unencumbered flats are the ones which are described in Annexure to the Deed of Supplementary Conveyance. In my view, the undertaking given by Respondent Nos.1 and 2 to keep the said 50 flats unencumbered during pendency of the suit provides adequate solace to the Plaintiff. Beyond keeping the 50 flats unencumbered, in my view no further relief can be granted in favour of the Plaintiff-Appellant at this stage. In my view therefore the impugned order dated 24 January 2024 deserves to be modified by recording undertaking given by Respondent Nos.1 and 2.

7) Order dated 24 January 2024 passed by the learned Civil Judge, Senior Division, Vasai, on application at Exhibit-5 filed in Special Civil Suit No.220 of 2023 shall stand modified as under:-

- (i) During pendency of Special Civil Suit No.220 of 2023 Defendant Nos.1 and 2 shall not create any third party rights and shall keep unencumbered 50

flats described in Annexure to the Supplementary Deed of Conveyance dated 22 May 2015.

- (ii) Relief granted by the Trial Court in respect of the Defendants informing the flat purchasers about pendency of the Suit while entering into sale transaction shall continue to apply during pendency of the Suit.
- (iii) The Trial Court shall proceed to decide the suit uninfluenced by any of the observations made in the impugned order dated 24 January 2024.
- (iv) All the contentions of the parties on merits are expressly kept open.

8) With the above observations the appeal is disposed of.

9) In view of disposal of Appeal nothing would survive in the Interim Application, same is accordingly disposed of.

[SANDEEP V. MARNE, J.]