

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 165 OF 2025

Twin Nest Co-op. Hsg. Soc. Ltd ... Applicant

V/s.

Shambhu Properties, a Partnership ... Respondents
Firm and Ors.

Mr. Chaitanya Nikte with Mr. Prajit S. Sahane and Mr. Ritvij Kale, for the applicant.

Mr. R.S. Kulkarni with Mr. Sandeep Mahadik, for respondent no. 1.

Mr. Ameya Borwankar, for the respondent nos. 3 to 11.

CORAM : N.J. JAMADAR, J.

DATE : 9TH APRIL 2025.

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1. This revision application is directed against an order dated 4th January 2025 passed by the learned Civil Judge, Pune whereby an application preferred by the applicant/defendant no. 1 (Exhibit-37) in Regular Civil Suit No. 1602 of 2024 for rejection of the plaint came to be rejected.

2. The plaintiff-respondent no. 1 is the partnership firm registered under the Indian Partnership Act, 1932. The Plaintiff had entered into the development agreement with defendant nos. 3 to 15 to develop the suit property. The applicant/defendant no. 1 is a Co-

operative society registered under the Maharashtra Co-operative Societies Act, 1960. The defendant nos. 3 to 11 were the holders of the property bearing Survey No. 12, Hissa No. 2/1 situated at Village Pashan, Tal-Haveli, District-Pune (the suit property).

3. Eventually, the plaintiff entered into agreements with the flat purchasers and later on the defendant no. 1 society/ flat/ Unit purchasers was formed. The defendant no. 1 had applied for deemed conveyance.

4. By an order dated 10th February 2023, the defendant no. 2 allowed the application for deemed conveyance in respect of an area admeasuring 7050 sq. mtrs., though the defendant no. 1 was entitled to conveyance of 6504 sq. mtrs. only. Hence the suit for the declaration that the order and certificate of deemed conveyance issued by defendant no. 1 dated 10th February 2023 is null and void and that the defendant no. 1 is entitled to the deemed conveyance for an area of 6504 mtrs only.

5. Defendant no. 1 took out an application for the rejection of the plaint on multiple grounds.

6. By the impugned order, the learned Civil Judge was persuaded to reject the application.

7. Mr. Nikte, learned counsel for the applicant, urged that the plaintiff-developer has no title to the suit property and, therefore, the plaint was liable to be rejected as the dispute as to the title to the

property, at the instance of plaintiff-developer, was legally unsustainable. Taking the Court through the averments in the plaint, especially the prayers therein, Mr. Nikate would urge that the suit in the present form was not tenable. The learned Civil Judge did not properly appreciate the nature of the objections raised by the defendant no. 1., urged Mr. Nikate.

8. Reliance was placed on a judgment of this Court in the case of ***M/s. Shree Chintamani Builders' Vs. State of Maharashtra and Ors.***¹, wherein the nature of order deemed conveyance passed by the competent authority was expounded. It was, *inter alia*, enunciated that the order of deemed conveyance does not preclude a party aggrieved thereby from filing a suit on title as the order of deemed conveyance would not conclude the issue of right, title and interest in the immovable property.

9. Mr. Nikate further urged that the plaintiff has no cause of action which invests him with right to sue. To this end reliance was placed on the judgment of the Supreme Court in the case of '***Tej Bahadur Vs. Narendra Modi***'²

10. The submissions of Mr. Nikate do not merit countenance. Evidently, the plaintiff was a party to the proceedings for deemed conveyance under Section 11 (3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963. The jural relationship between the plaintiff and

1 (2016) SCC Online Bom 9343

2 (2021) 14 SCC 2111

the defendant nos. 3 to 11 as well as plaintiff and defendant no. 1 is not in dispute. In the development agreement executed by the defendant nos. 3 to 11 in favour of the defendant no. 1, the area of the property was shown 6504 sq.mtrs. In contrast, the deemed conveyance has been ordered to be executed in respect of an area admeasuring 7050.50 sq.mtrs. Clearly, a dispute as to the title of the said additional area has arisen between the parties. Thus, the submission on behalf of the defendant no. 1 that the plaintiff- developer has no locus to assail the legality and validity of the said deemed conveyance order, which hinges upon the entitlement of the defendant no. 1 to have a deemed conveyance, of allegedly an excess area, simply does not merit countenance.

11. Whether the plaintiff would succeed in the said suit is an altogether different aspect. However, it would be preposterous to suggest that the plaintiff has no right to sue.

12. The learned Civil Judge, thus, committed no error in rejecting the application for the rejection of the plaint. No interference is, thus, warranted in exercise of revisional jurisdiction.

13. The application stands dismissed.

(N.J. JAMADAR, J)