

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2669 OF 2025
IN
FIRST APPEAL NO.878 OF 2014

Navinchand Mulchand Fofalia (since deceased)
Thr. LRs. 1a. Paras Navinchand Fofalia and Ors. ... Applicants.

In the matter between:

Navinchand Mulchand Fofalia (since deceased)
Thr. LRs. 1a. Paras Navinchand Fofalia and Ors. ... Appellants.

Versus

Mr. Fatechand Naraidnas Vazirani and Ors. ... Respondents.

Mr. S.C. Mahamuni i/by Suresh Dubey for the Applicants.
Ms. N.V. Sanglikar for Respondent Nos.1 and 2.
Ms. Pallavi Khale, for Respondent No.4-Corporation.

Coram : Sharmila U. Deshmukh, J.
Date : February 27, 2025

P. C. :

1. Interim Application has been preferred in the First Appeal seeking return of documents which are detailed in Exhibit A and had been tendered by the Appellants in evidence.
2. Learned counsel appearing for the Applicants submits that the Record and Proceedings were received from Bombay City Civil Court upon the admission of the Appeal and that the documents are required by the Appellants for obtaining loan, redevelopment and other purposes and that they are ready to furnish the true copies

/photo copies/certified copies of the said documents.

3. The said request is opposed by learned counsel appearing for the Respondents and she submits that the original documents cannot be returned as the cause which is stated in the Application is for the purpose of redevelopment etc. which will interfere with the rights of the Respondents. She would further submit that the suit was filed challenging the sanctioned plans, which has been dismissed as against which the present Appeal has been filed. She submits that the Applicants intends to change the status of the suit property by redeveloping and parting with the possession. She submits that the subsequent event would show that the Applicants have started allowing outsiders to park cars on unbuilt portion of plot No.43 which belongs to the Applicants. She submits that it is therefore clear that upon the return of documents, the Applicants intend to change the status of the property and interfere with the Respondent's rights during the pendency of the First Appeal and therefore opposes the application.

4. I have considered the submissions.

5. It is admitted position that the documents of which return is requested are the documents produced by the Appellants during evidence. The Respondent's case is not that the documents pertain to the Respondent's title in the property and were tendered by the Respondents and therefore, the Applicants have no right to seek

return of the originals. The First Appeal has already been admitted and is not likely to be taken up for final hearing immediately. The documents having been tendered by the Applicants in evidence, the Applicants having the right to seek return of documents. Order 13 Rule 9 of the CPC permits return of admitted documents. Even if the purpose of return of the documents is stated for obtaining of the loans, succession certificate, redevelopment etc., this Court cannot go into the reason sought for return of documents and it is open for the Respondents to adopt appropriate proceedings for necessary injunction/stay to any redevelopment which may be proposed or to restrain any act of the Applicants, which would interfere with the rights of the Respondents. For the said reason, the original documents which were produced by the Applicants during the evidence stage cannot be withheld by this Court.

6. In light of the above, the following order is passed.

- ORDER -

(i) The Registry is directed to send the Record and Proceedings to Bombay City Civil Court, where the concerned department will return the original documents upon following the necessary procedure as prescribed by law.

(ii) The said exercise to be carried out within a period of two months from today.

(iii) After the said exercise is carried out, the Record and Proceedings be returned back to this Court.

(iv) Interim Application is allowed in the above terms.

[Sharmila U. Deshmukh, J.]