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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1336 OF 2005

Smt.Shantidevi Lalchand Chhaganlal
Foundation "A" Trust

.. Appellants

Versus

M/s.Kanti Builders Pvt.Ltd. And Anr.

.. Respondents

WITH

INTERIM APPLICATION (ST.) NO.22349 OF 2025

IN

FIRST APPEAL NO.1336 OF 2005

Kanti Builders Pvt.Ltd. And Anr.

.. Applicant

Versus

Shantidevi Lalchand Chhaganlal Foundation
And Trust

.. Respondent

WITH

INTERIM APPLICATION (ST.) NO.31381 OF 2025

IN

FIRST APPEAL NO.1336 OF 2005

Kanti Builders Pvt.Ltd. And Anr.

.. Applicants

Versus

Shantidevi Lalchand Chhaganlal Foundation

.. Respondent

WITH

**INTERIM APPLICATION (ST.) NO.31753 OF 2025
IN
FIRST APPEAL NO.1336 OF 2005**

Taramati Charitable Foundation

.. Applicant

Versus

Kanti Builders Pvt.Ltd.

.. Respondent

Mr. Pravin Samdani Sr.Advocate a/w Mr.Nikhil Sakhardande Sr. Adv. a/w Mr. Firoz Bharucha a/w Mr.Ashish Venugopal a/w Mr.Ravi Gandhi, Mr.M. A. Kamdar, Mr. Sunit Pillay, Mr. Krishit Nandu i/b M/s.Kanga & Company for the Applicant in IA (St.) No. 22349/2025 a/w IA (St.) No. 31381/2021, Advocates for the Petitioner.

Mr.Mayur Khandeparkar a/w Mr.Devansh Shah a/w Mr.Kapil Shah a/w Mr.Vatsal Parmar i/b M/s.MK Juris Associates, Advocates for the Appellants in First Appeal & Respondent in IA

Mr. Karl Tamboli with Ms. Vinodini Srinivasan, i/b Mr. Dharmesh S. Jain, Advocates for Applicant in IA (St.) No. 31573/2025

Ms.Shilpa G. Talhar, A.G.P. for the Respondent/State.

CORAM: FIRDOSH P. POONIWALLA, JJ.

DATE: SEPTEMBER 25, 2025

P. C.

1. This First Appeal has been filed against the Decree dated 22nd March 2005 passed by City Civil Court, Bombay in S.C.Suit No.9302 of 1991. The operative part of the Decree reads as under:

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(This order has been modified by speaking to minutes of order dated 26th November 2025)

“Suit is decreed as under:

- 1. It is declared that the plaintiff is the owner of the land C.T.S. No. 374/B/2,ad-measuring 2,69,249.2 sq. mtrs. along with the relief of TDR of road widening.*
- 2. Defendant no. 1 their agents and servants and the trustees are hereby restrained by permanent injunction not to obstruct the peaceful possession of plaintiff over C.T.S No. 374/B/2 and should not encroach over the suit land.*
- 3. Defendant no. 2 state Government and their officers are directed to delete the name of defendant no. 1 from the record of C.T.S No 374/B/2.*
- 4. Defendant No. 2 state Government is directed further to find out the area of the defendant no. 1 and prepare separate C.T.S number for the area of 10,320 sq. mtrs, if possible.*
- 5. No order as to cost.*
- 6. Decree be drawn be accordingly.”*

2. Interim Application (St.) No.22349 of 2025 has been filed by Respondent No.1 in the Appeal seeking the following prayers:

“a. That this Hon'ble Court be pleased to direct the Appellant to remedy the breach of Order and Minutes of Order dated 17th March 2017 by which permission for fencing 10,320 Square Meters of land ('the said land') (C.T.S. No. 374B/2) was granted to Applicants and clear the unauthorised dumping waste and debris on the said property and further restraining Appellant by way of injunction to dump waste and/or debris or any other material on the said property;

b. For such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this Case;

c. Costs of this Application be provided for.”

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(This order has been modified by speaking to minutes of order dated 26th November 2025)

3. Further, Interim Application (St.) No.31381 of 2025 has also been filed by Respondent No.1 seeking appointment of a Court Receiver in respect of the property and also for an order of injunction. Prayers (a) and (b) of the said Interim Application reads as under:

“a. That this Hon'ble Court be pleased to appoint a Court Receiver under the provisions of Order XL of the Code of Civil Procedure, 1908 and hand over the clear, peaceful and vacant possession of the said Property to the Applicants;

b. That this Hon'ble Court be pleased to restrain the Appellant Trust by way of an injunction from carrying out any further activities which include any construction activities on the said Property and to remove all the structures erected on the said Property;”

4. Interim Application (St.) No. 31753 of 2025 has been filed by one Taramati Charitable Foundation seeking to intervene in Interim Application (St.) No.22349 of 2025.

5. It is the case of the Respondent No.1 that after the said decree dated 22nd March 2025 was passed in its favour, the present Appeal was filed, and by an Order dated 28th September 2005 the First Appeal was admitted and the execution of the decree, insofar as it related to an area of 10320 sq.mtrs. in CTS No.374-B/2, was stayed.

6. Further, by an Order dated 17th March 2017, an Order was passed in terms of the Minutes of the Order signed and handed over by the parties. As per the said Minutes of Order, Respondent No.1 was permitted to erect barbed wire fencing on the subject property admeasuring 10,320 square meters. The Order also provides that the Respondent No.1 shall not claim any equities on the subject property in view of the permission being granted by the said Order and that the Order was without prejudice to the rights and contentions of the parties.

7. It is the case of Respondent No.1 that, despite the same, the Appellant was dumping debris on the said property. In these circumstances, Respondent No.1 filed Interim Application (St.) No.22349 of 2025. It is the case of Respondent No.1 that, in the Affidavit in Reply filed in the Interim Application, the Appellant mentioned for the first time that it had entered into a Leave and License Agreement dated 10th April 2025 with one M/s.United Marketing and Research Bureau Limited. It was the case of the Appellant that same was for conducting the Chaturmas on the said property for which several permissions were needed which would be obtained by the said M/s.United Marketing and Research Bureau Limited.

8. It is the case of Respondent No.1 that, in light of the said facts being brought on record by the Appellant, Respondent No.1 filed Interim Application (St.) No.31381 of 2025 seeking appointment of a Receiver.

9. The Appellant also referred to a No Objection Certificate at page 188 of the Interim Application (St.) No.31381 of 2025 wherein it is stated that the said Leave and License Agreement dated 10th April 2025 was granted to M/s.United Marketing and Research Bureau from 10th April 2025 till 31st July 2032.

10. Further, in the Interim Application filed by the Intervenor Taramati Charitable Foundation, it is disclosed that the said Taramati Charitable Foundation had been granted temporary permission to use a portion of the subject property admeasuring about 7500 sq.mtrs. for the purpose of organizing the Navratri Function scheduled to be held from 22nd September 2025 to 5th October 2025. It was also disclosed that Taramati Charitable Foundation had entered into a Memorandum of Understanding dated 30th August 2025 with one M/s.United Marketing and Research Bureau Limited, through its proprietor Mr.Dharmesh Shah who was in possession of the entire subject property. It was also stated that based on the said permissions, the Taramati Charitable Foundation had constructed a

temporary dome structure and installed necessary infrastructure, including air-conditioning, to conduct the Navratri function. It was further stated that Taramati Charitable Foundation had incurred an expenditure of over Rs.2.5 Crores for that event, including logistical arrangements and infrastructure setup, and 1500 season passes had already been sold.

11. It is important to note that, although the said M.O.U. is supposed to be dated 30th August 2025, it is typed on a stamp paper dated 16th September 2025 and purchased on 18th September 2025, i.e. much after Respondent No.1 raised its grievance regarding the subject property.

12. On these facts, it was the submission of Mr.Samdani, the learned Senior Counsel appearing on behalf of Respondent No.1, that there was a decree in favour of Respondent No.1 (the Plaintiff) in respect of land bearing CTS No.374/B/2 admeasuring 2,69,249.2 sq.mtrs., which included the said 10,320 sq.mtrs., and that Appellant had been restrained by a permanent injunction not to encroach over the suit land. Mr.Samdani submitted that, although the execution of decree as far as area of 10,320 sq.mtrs. in CTS No.374/B/2 was stayed, the same did not give the Appellant the right to use the said property. Mr.Samdani also submitted that it was for this reason that permission was granted to erect the fencing around the subject property.

13. Mr.Khandeparkar, the learned counsel appearing on behalf of the Appellant, referred to the findings in the decree in an attempt to show that the Appellant was in possession of the property. Further, Mr.Khandeparkar also submitted that since no condition was put qua the Appellants while granting stay on the execution, no condition regarding use of the property should be imposed at this stage and that the Appellant was entitled to use the property. Mr.Khandeparkar submitted that the issue of possession would be dealt with in the Appeal.

14. Mr.Tamboly, the learned counsel appearing on behalf of the Taramati Charitable Foundation, submitted that they had only taken permission from M/s.United Marketing and Research Bureau Ltd. for the purpose of organizing a Navratri function on a part of the subject property from 22nd September 2025 to 5th October 2025 and that after that date they would remove the construction made by them on the property. Mr.Tamboly submitted that the Taramati Charitable Foundation be permitted to be on the property till 5th October 2025.

15. I have heard the learned counsel for the parties. By the decree dated 22nd March 2025 passed by the City Civil Court, Respondent No.1 (the

Plaintiff) has been declared the owner of land bearing CTS No.374/B/2, admeasuring 2,69,249.2 sq.mtrs. along with the relief of TDR of road widening. Further, Defendant No.1 (Appellant) their agents and servants have been restrained by a permanent injunction not to obstruct the peaceful possession of Respondent No.1 (the Plaintiff) over C.T.S No. 374/B/2 and not to encroach over the suit land. Although, by an Order dated 28th September 2005 passed by this Court, the stay to the execution of the decree so far as it relates to an area of 10,320 sq.meters in CTS No.374/B/2 has been granted, in my view, the same does not give any license to the Appellant to start using the property. In this context, it is important to note that, for a period of almost 20 years from 2005 to 2025, this position had been maintained even by the Appellant.

16. Further, the Order dated 17th March 2017 passed by this Court, taking on record the Minutes of the Order agreed to by the parties shows that, in respect of the said area of 10,320 sq.mtrs, Respondent No.1 is permitted to erect barbed wire fencing. This also clearly shows that, pending the Appeal, the subject property admeasuring 10,320 square meters was to be protected and no use of the same had to be made by any of the parties.

17. Despite the same, as stated hereinabove, the Appellant had entered into the said Leave and License Agreement dated 10th April 2025 with M/s. United Marketing and Research Bureau Limited. Further, the Appellant has allowed the said property to be used for the purpose of Chaturmas festival and for the purpose of Navratri festival.

18. Further, in the light of the operative part of the decree accepting that Respondent No.1 is in peaceful possession of the said property, the attempt made Mr.Khandeparkar to show from the findings in the decree that the Appellant is in possession of the property, does not take his case any further. In my view, the decree holds that Respondent No.1 is in peaceful possession of the property and whether that decision is correct will be decided at the final hearing of the Appeal.

19. In the light of this conduct of the Appellant in using the property despite it being very clear that the property should not be used by any of the parties, in my view, it is just and convenient to appoint a Court Receiver in respect of the said property admeasuring 10,320 sq.mtrs. in CTS No.374/B/2. Accordingly, the following order is passed:

- a. The Court Receiver, High Court, Bombay is appointed as Court Receiver in respect of the property admeasuring 10,320 sq.mtrs. in CTS No.374/B/2. The Court Receiver shall measure and demarcate the said property.
- b. Taramati Charitable Foundation shall be appointed as an agent of the Receiver from today till 5th October 2025, on payment of such Royalty as may be fixed by the Court Receiver after hearing the parties.
- c. As far as the festival of Chaturmas is concerned, page 199 of Interim Application (St.) No.31381 of 2025 shows that the same is been held in a tarpaulin shed by the Appellant. The said festival is supposed to continue till 7th November 2025. The Appellant shall be appointed as an agent of the Court Receiver in respect of the said property which is being used for Chaturmas without any payment of Royalty till 10th November 2025.
- d. It is made specifically clear that the Taramati Charitable Foundation will vacate the property by 5th October 2025 and also clear all the construction made by it by that date.

- e. Similarly, the Appellant will also clear all the construction made by it on the said property in respect of the Chaturmas festival by 10th November 2025.
- f. The initial cost and charges of the Court Receiver shall be borne by Respondent No.1, Kanti Builders Pvt.Ltd.
- g. All amounts paid to the Court Receiver as Royalty will stand deposited in the Court and will be to the credit of the Suit. The Royalty will be deposited with the Registrar, High Court, Appellate Side, Bombay.
- h. Interim Application (St.) No.22349 of 2025, 31381 of 2025 and 31753 of 2025 are disposed of. There will be no order as to costs.
- i. Place the Appeal for final hearing on 13th November 2025 at 3 p.m.

[FIRDOSH P. POONTIWALLA, J.]