

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.535 OF 2025

Vile Parle Rajtara CHS Limited and Others

Appellants

(Orig. Defendant

.. Nos.1 to 5)

Versus

Mahesh Mahendra Bhai Mody

Respondent

.. (Original Plaintiff)

.....

- Mr. Siddhesh Bhole, Mr. Dinesh Rajpurohit, Ms. Aditi Hambarde, Advocates i/b Mr. Dinesh Rajpurohit for Appellants.
- Mr. Mayur Khandeparkar a/w Mr. Vikramjit Garewal, Mr. Rupesh Geete and Mr. Avesh Ganja, Advocates i/b Satyaki Law Associates, for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 11, 2026.

P.C.:

1. Heard, Mr. Bhole, learned Advocate for Appellants and Mr. Khandeparkar, learned Advocate for Respondent.

2. Appeal from Order assails impugned order dated 09.07.2025 passed by the City Civil Court, Dindoshi in Notice of Motion No.1701 of 2024 in S.C. Suit No.987 of 2024 whereby the Trial Court partly allowed the Notice of Motion and granted ad-interim / interim relief in favour of the original Plaintiff. Impugned order is appended to the Appeal Memo. Parties are referred to as “Plaintiffs” and “Defendants” for brevity.

3. Briefly stated, Defendant No.1 – Society comprises of three (3) buildings which are numbered as Wing – A, Wing – B and Wing – C. All these 3 Wings are joint, Wing – A and Wing – B comprises of ground plus 4 storeys and can easily be accessed from one wing to the other, whereas Wing – C comprises of ground plus 3 storeys and therefore cannot be accessed from one wing to the other.

4. It is original Plaintiff's case that he purchased Flat No. B-405 situated in Wing-B of Defendant No.1 – Society together with an adjoining terrace admeasuring approximately 1,494 sq. ft. from the original Developer under an agreement dated 11.06.1981. It is Plaintiff's case that on 12.12.2021, Defendant No.1 – Society in its General Meeting directed Plaintiff to erect a permanent rain-shed on the terrace to prevent rain water leakage to the flats on the 3rd floor of the Wing – C. It is Plaintiff's case that he is in possession of the said terrace since the date of purchase and has been paying maintenance and other charges in respect thereof.

5. In or about the year 2021, the Defendant No.1 – Society initiated the process of redevelopment and appointed an Architect for preparation of a feasibility Report. On 13.04.2021, the feasibility Report mentioned Plaintiff's entitlement to 1/3rd area of the terrace in redevelopment. It is Plaintiff's case that terrace formed part of his property and he is entitled to redevelopment benefits in respect

thereof.

6. In the interregnum, disputes arose between the parties. It is Plaintiff's case that until the resolution passed on 19.10.2022, Defendant No.1 – Society recognized the terrace area as the part of Plaintiff's property. However on 14.12.2022, Defendant No.1 – Society received a final offer from Defendant No.5 – Developer for implementation of the redevelopment project wherein the Developer neglected to account for 1494 sq. ft of terrace of the Plaintiff and only accounted for 414 sq. ft. of the flat in the redevelopment plan. Thereafter, in and around February 2024, the Defendant No.1 – Society disputed the ownership of Plaintiff to the terrace and refused to consider the area of terrace in the redevelopment process stating that terrace constitutes a common amenity of the Society and no individual member could claim exclusive ownership or redevelopment benefits in respect of the same.

7. In view of the aforesaid dispute, Plaintiff instituted Short Cause Suit No.987 of 2024 before the City Civil Court at Dindoshi seeking, *inter alia*, protection of his alleged rights in respect of the terrace area and consequential redevelopment benefits. In the said suit, the Plaintiff also took out Notice of Motion No.1701 of 2024 seeking interim reliefs restraining the Defendant No.1 – Society and Defendant No.5 – Developer from proceeding with the redevelopment in a

manner prejudicial to his alleged rights in the terrace area.

8. Defendants opposed the Notice of Motion by filing an Affidavit In Reply wherein they disputed the Plaintiff's claim over the terrace and asserted that the same formed part of the common areas of the Society. The Plaintiff filed a rejoinder thereto. On 09.07.2025, on hearing the parties and considering the material placed on record, the City Civil Court passed the said impugned order. Being aggrieved by the same, Defendants have preferred the present Appeal from Order.

9. Mr. Bhole, learned Advocate for Appellants (original Defendants) would submit that the impugned order dated 09.07.2025 is liable to be set aside as the Trial Court has in effect granted the final relief sought in the Suit at an interlocutory stage. He would submit that the Plaintiff instituted the suit seeking a permanent injunction restraining the Society and Developer from executing a Development Agreement and the interim order substantially grants the same relief without any evidence being led. He would submit that the Trial Court failed to independently examine the requirements of *prima facie* case, balance of convenience and irreparable injury and proceeded on the erroneous assumption that once a *prima facie* case was established, the other two requirements automatically followed.

9.1. He would submit that the Plaintiff's claim to an exclusive open-to-sky terrace admeasuring approximately 1494 sq. ft. attached

to a flat admeasuring only 414 sq. ft. is unsupported by the sanctioned plan. He would submit that although the sanctioned plan was placed on record by the Defendants the Trial Court incorrectly recorded that no such plan was available and failed to consider that the sanctioned plan does not show any exclusive terrace attached to Plaintiff's flat.

9.2. He would submit that Plaintiff failed to produce any sanctioned plan evidencing ownership or exclusive entitlement to the terrace. He would further submit that photographs on record demonstrate the existence of an independent access to the terrace which is allegedly blocked by Plaintiff without authority. He would submit that the Trial Court also failed to appreciate that the Plaintiff has not sought any declaration of ownership. In support of his submission and in view of the principles laid down in the decision of the Supreme Court in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRS. And Others.*¹, wherein the Court held that a simpliciter injunction suit is not maintainable where title is under a cloud.

9.3. He would submit that the Trial Court erroneously relied solely upon Clause 16 of the unregistered Agreement dated 11.06.1981 while ignoring the recitals and Clauses 12, 15 and 51 thereof. He would submit that Clause 16 has been read in isolation and that the Agreement nowhere conclusively establishes transfer of ownership of

¹ (2008) 4 SCC 594

the terrace. He would submit that the expression "adjoining terrace" appears only as a handwritten insertion and finds no support in the sanctioned plan. He would submit that the door

9.4. He would further submit that the alleged consideration attributed to the terrace is itself a handwritten insertion and renders the Plaintiff's claim highly doubtful. He would submit that the Trial Court failed to consider the decisions of the Supreme Court and this Court in the case of *Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd.*² and *Ramagauri Keshavlal Virani v. Walkeshwar Triveni Co-operative Housing Society Ltd. and Others*³, which recognize terraces as common areas and hold that a Developer cannot independently sell a terrace. He would submit that the Trial Court misapplied Section 4A of Maharashtra Ownership Flats Act, 1963 (for short "MOFA"), which is confined to cases involving specific performance or part performance and have no application to the present dispute. Further in support of his submissions he has referred to and relied upon the decision of this Court in the case of *Preeti Manohar Sakpal Vs. The Municipal Corporation of Greater Mumbai and Another*.⁴

9.5. He would submit that the physical features of the premises themselves belie the Plaintiff's claim of exclusive ownership over the

2 (2010) 9 SCC 536

3 1999 (3) Mh.L.J.145

4 Contempt Petition No.330 of 2025 in Appeal from Order No.874 of 2024

terrace. He would submit that the only access relied upon by the Plaintiff is a door opening from the kitchen area of Flat No. B-405, which by itself cannot confer title or exclusive ownership over a substantial open-to-sky terrace. He would submit that if the Respondent genuinely believed that he acquired ownership rights in the terrace under the Agreement dated 11.06.1981, no steps whatsoever were taken since 1981 to perfect or establish such title before any statutory authority or competent forum.

9.6. He would submit that for over four decades, the Plaintiff failed to obtain any declaration, correction in records, sanctioned plan, or other document recognizing his alleged ownership rights. He would further submit that the terrace in question is structurally situated over and forms part of the C-Wing of the building and not the B-Wing in which the Plaintiff's flat is located. He would submit that this circumstance itself creates a serious cloud over the Plaintiff's claim and demonstrates that the alleged entitlement is neither clear nor free from doubt. He would therefore submit that the Trial Court erred in accepting the Plaintiff's assertions at face value and granting an injunction despite the absence of any clear legal title or conclusive documentary evidence

9.7. He would submit that Trial Court findings on irreparable injury and balance of convenience are equally unsustainable. He would

submit that even assuming the Plaintiff succeeds at trial, any entitlement claimed in respect of the terrace is capable of being compensated in monetary terms. He would submit that the Trial Court failed to consider that the Developer has already expended approximately Rs.25 lakhs towards redevelopment and that an overwhelming majority of members have approved the project.

9.8. He would submit that the Affidavit of Defendant No.5, the prejudice to the Society members and the losses being suffered by the Developer have not been considered at all. He would further submit that reliance upon the Architect's feasibility report was misplaced, as such report is merely an opinion and cannot override the sanctioned plan which has statutory force. He would submit that mere possession, payment of assessment charges or municipal taxes do not confer title and that the Society has never admitted ownership of the terrace in favour of the Respondent.

9.9. He would submit that the redevelopment project cannot be indefinitely stalled at the instance of a single member to the detriment of the overwhelming majority. He would submit that despite repeated opportunities, including in the meeting dated 09.10.2009, the Plaintiff failed to produce any document establishing ownership of the terrace. He would submit that the unregistered Agreement is hit by Sections 17 and 49 of the Registration Act, 1908 and cannot be relied upon in the

manner sought by the Plaintiff. He would therefore submit that the impugned order deserves to be quashed and set aside in the interest of justice and a time-bound trial may be directed so that the rights of the parties are adjudicated expeditiously without obstructing the redevelopment process.

10. Mr. Khandeparkar, learned Advocate for Respondent (original Plaintiff) would submit that Defendant No.1 - Society is estopped from disputing Plaintiff's rights in the attached terrace after having consistently recognized, acknowledged and acted upon such rights for over four decades. He would submit that the Agreement for Sale dated 11.06.1981, under which the Plaintiff purchased Flat No. B-405, specifically contemplated flat with attached terrace and expressly provided that purchasers of such terrace flats would be entitled to the exclusive use thereof. He would submit that Clause 4 of the Agreement records that the Plaintiff purchased Flat No. 405 *"with adjoining terrace on 4th floor"* and the total consideration of Rs.90,000/- included a sum of Rs.25,000/- specifically towards the adjoining terrace.

10.1. He would submit that Clause 16 of the Agreement further stipulates that purchasers of terrace flats shall be entitled to the exclusive use of the terraces attached thereto and that neither the Society nor any other body would have access to such terraces except

for limited purposes of maintenance of water tanks. He would submit that it was on the basis of this very Agreement that the Society inducted the Plaintiff as a member on 03.12.1981 and issued a Share Certificate in his favour.

10.2. He would submit that the conduct of the Society since 1981 unequivocally establishes its acknowledgment of Plaintiff's right over the terrace. He would submit that the Society continuously levied and collected maintenance charges in respect of the terrace area from the Plaintiff and that the maintenance bill dated 01.10.2022 itself reflects such treatment. He would submit that under the Stamp Duty Abhay Yojana floated by Government in the year 2008, the Agreement dated 11.06.1981 was submitted for adjudication by the Competent Authority and by order dated 17.09.2009 the Authority recorded that the stamp duty paid was sufficient, including with respect to the attached terrace.

10.3. He would submit that the Society itself repeatedly treated the terrace as belonging to Plaintiff. He would submit that by letter dated 27.06.2012, in response to the Plaintiff's correspondence, the Society specifically requested the Plaintiff to undertake waterproofing work of his "private terrace" while separately undertaking waterproofing work in respect of common terraces. He would submit that such conduct is wholly inconsistent with the Society's present

contention that the terrace forms part of the common areas.

10.4. He would submit that the Society continued to recognize the Plaintiff's exclusive rights even in subsequent years. He would submit that pursuant to complaints regarding water leakage, the Society by its letter dated 19.12.2021 specifically requested Plaintiff to install a permanent rain shed in "*your terrace*" to prevent leakage into the underlying flats of C-Wing. He would submit that while pursuing deemed conveyance, the Society itself demanded and accepted stamp duty amounts specifically towards the terrace on multiple occasions in the years 2019 and 2020. He would submit that such demands and receipts clearly demonstrate that the Society acknowledged the terrace as an identifiable and distinct component attached to Plaintiff's flat and cannot now be permitted to approbate and reprobate by asserting a contrary position.

10.5. He would submit that the feasibility report prepared by Architect Mr. Natekar further fortifies the Plaintiff's case. He would submit that the Architect examined the certified approved plans and expressly recorded that the open-to-sky terrace admeasuring 1494 sq. ft. was attached to Flat No. B-405. He would submit that the Architect considered 33% of the terrace area while calculating the existing rehabilitation carpet area and redevelopment benefits available to the Plaintiff. He would submit that although the Architect referred to the

terrace as a "common terrace", the Society itself objected to such description by its email dated 12.07.2021 and specifically directed that the terrace be described as an "Open to Sky Personal Terrace". He would submit that the Society further demanded that the recalculated area of the personal terrace be considered while determining free additional carpet area, displacement compensation and hardship compensation payable to the Plaintiff in the redevelopment project. He would submit that these contemporaneous admissions leave no doubt that the Society itself consistently accepted Plaintiff's entitlement to the terrace and redevelopment benefits arising therefrom.

10.6. He would submit that it is an admitted position that the Plaintiff has been in uninterrupted, exclusive and unrestricted possession and use of the terrace since 1981. He would submit that the Society's own Affidavit filed in the Notice of Motion admits that the Respondent had opened access from his kitchen to the terrace and has been claiming and using the terrace since 1981. He would submit that the Society has further admitted that despite questions being raised at the relevant time, the members remained silent as they believed that Plaintiff had purchased the terrace. He would submit that all redevelopment calculations and proposals were accordingly proceeded with on the basis that the Plaintiff would receive benefits attributable to the terrace area, including the benefit of 33% of the terrace area as recognized in the feasibility report. He would submit that having

consistently represented and acted upon the Plaintiff's entitlement for more than forty (40) years, the Society is now clearly estopped from disputing such entitlement. In support of his submissions he has referred to and relied upon the decision of the Supreme Court in the case of *B.L. Sreedhar and Ors. Vs. K.M. Munireddy and Ors.*⁵ which squarely apply to the facts of the present case.

10.7. He would submit that the present attempt of the Society is nothing but an abuse of its majority to deprive the Plaintiff of rights long recognized and acted upon. He would submit that the overwhelming majority of members cannot by virtue of their numbers, extinguish vested rights of a minority member. He would submit that the redevelopment process must proceed in a manner that protects and preserves the lawful rights of every member, including the Plaintiff. In support of his submissions he has referred to and relied upon the decision of this Court in the case of *Venus Co-operative Housing Society & Anr. v. Dr. J.Y. Detwani & Ors.*⁶ which clearly recognize that a majority cannot ride barbarous over the rights of a minority member. He would therefore submit that the Trial Court rightly protected the Plaintiff's rights pending adjudication and that no interference with the impugned order is warranted.

11. I have heard, Mr. Bhole, learned Advocate for Appellants and

⁵ (2003) 2 SCC 355

⁶ 2002 SCC OnLine Bom 1457

Mr. Khandeparkar, learned Advocate for Respondent and perused the entire record of the case. Submissions made by both the learned Advocate at the bar have received due consideration of the Court.

12. In view of the above I am of the considered opinion that no case is made out warranting interference with the discretionary order passed by the learned Trial Court. At the stage of considering an Appeal from Order against an interlocutory order, the Appellate Court would not interfere unless the discretion exercised by the Trial Court is shown to be arbitrary or contrary to settled principles of law. I find no such arbitrariness in passing of the impugned order for more than one reason.

13. At the outset it is seen that material placed on record indicates that the Plaintiff has placed substantial contemporaneous documentary evidence in support of his claim regarding the use of the attached terrace and the conduct of the Society in acknowledging Plaintiff's right in the attached terrace. The Agreement for Sale dated 11.06.1981 specifically records that Flat No. B-405 was purchased together with an adjoining terrace. Clause 16 of the said Agreement further contemplates terrace flats and recognizes exclusive user rights in respect thereof. Though the issue of redevelopment and the attending benefits have driven the parties to the present lis, case of the Plaintiff in such circumstances cannot be summarily dismissed.

14. It is seen that Plaintiff has also placed on record the Share Certificate issued by the Society, maintenance bills, correspondence exchanged between the parties, documents pertaining to adjudication under the Stamp Duty Abhay Yojana floated by Government in the year 2008 and the feasibility report prepared by the Society's own Architect. At this interlocutory stage, the cumulative effect of all these documents cannot be brushed aside as insignificant and the Society's case cannot be accepted. What is seen is that the present dispensation of the Society is unable to accept the decisions of the previous regime and have raised it as a legally triable issue.

15. What assumes considerable significance is the conduct of Defendant No.1 – Society over a period spanning more than four decades. *Prima facie*, it is seen that the material on record demonstrates that since 1981 the Society treated the terrace as being attached to the Plaintiff's flat. Admittedly it has always been used by the Plaintiff. Society's objection is very recent.

16. At the outset, it is seen that the Society collected maintenance charges relatable to the terrace area, called upon the Plaintiff to undertake waterproofing work in respect of his "private terrace" by communication dated 27.06.2012, directed him by letter dated 19.12.2021 to install a permanent rain shed on "your terrace" and while considering redevelopment, sought to include benefits

arising from the terrace area in the Plaintiff's entitlement. It is seen that the Society's email dated 12.07.2021 further reveals that it objected to the Architect describing the terrace as a "common terrace" and insisted that it be referred to as an "open to sky personal terrace". Hence, *prima facie*, these acts constitute admissions and representations which cannot be ignored at this stage. In the above circumstances, the complete "U" turn done by the Society *prima facie* smacks of greed and arrogance on the part of the Society. Had the Society taken exception since inception, it would have been a different case. Hence, conduct of the Society and its present Office bearers is clearly fraudulent on the face of record. If the Society now wants to insist upon legal documentation and right to occupy the terrace, then that should have been its stand since inception. That is not the case. Conduct of the Office bearers and the members of the Society is therefore *prima facie* dishonest and fraudulent only because of the benefit and greed of redevelopment.

17. Even though the Defendants have raised serious contentions regarding the absence of title documents, the location of the terrace over C-Wing, the absence of any declaration sought in the Suit and the legal effect of the sanctioned plans, those issues would require a full-fledged adjudication upon appreciation of oral and documentary evidence. At this stage, this Court is not called upon to finally determine the question of ownership, title or proprietary rights in

respect of entitlement of the terrace. The rival claims of the parties raise disputed questions of fact and law which can only be conclusively determined at trial.

18. In view of the considered opinion that Plaintiff has *prima facie* succeeded in demonstrating a long-standing and uninterrupted course of conduct extending over more than forty years wherein the Society itself acknowledged and acted upon the Plaintiff's claim in respect of the terrace. Hence, in my opinion the sudden departure from such consistent conduct is due to it coinciding with the redevelopment process and dispute regarding redevelopment benefits. In such circumstances, the Trial Court cannot be faulted for holding that Plaintiff had established a *prima facie* case warranting protection pending adjudication of the Suit.

19. Insofar as balance of convenience is concerned, this Court finds that if redevelopment process is permitted to proceed on the basis that Plaintiff has no rights whatsoever in respect of the terrace and third-party rights are thereafter created, Plaintiff may suffer consequences which may not be reversible. On the other hand, the Defendants' contention regarding delay in redevelopment and financial prejudice can be appropriately addressed at the trial by seeking expeditious disposal of the Suit. The balance of convenience, therefore, *prima facie* leans in favour of preserving the existing position until the

rights of the parties are adjudicated. I am therefore inclined to accept the submissions of Mr. Khandeparkar on behalf of the Plaintiff.

20. It is clarified that this Court has not expressed any final opinion on the issue of title, ownership or exclusive entitlement of the Plaintiff in respect of the terrace admeasuring approximately 1494 sq. ft. All observations made herein and in the impugned order are *prima facie* in nature and shall be subject to the final outcome of S.C. Suit No.987 of 2024. The Trial Court shall decide all issues independently and uninfluenced by any observations contained in this order.

21. However, considering that the dispute pertains to an ongoing redevelopment project, the Trial Court is requested to expedite the hearing and disposal of S.C. Suit No.987 of 2024 as expeditiously as possible and preferably within a time-bound schedule.

22. In view of the aforesaid observations and findings, I do not find any perversity, illegality or jurisdictional error in the impugned order dated 09.07.2025 passed by the Trial Court warranting interference of this Court. Hence, the impugned order is upheld and confirmed.

23. Resultantly, the Appeal from Order is dismissed.

[MILIND N. JADHAV, J.]