

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 647 OF 2025

WITH

INTERIM APPLICATION NO. 38781 OF 2025

WITH

INTERIM APPLICATION NO. 38780 OF 2025

Lt General Yash Malhotra, Avsm, (Retired) ..Appellants
(Since Deceased through His Heirs/Legal
Representatives)
1(A) Neelam Yash Malhotra and Ors

Versus

Urban Horse Property Developers Pvt Ltd ...Respondents
(Originally known as Tanna Pune Land
Development Pvt Ltd) and Ors

Mr. Amit Shroff, with Vijay Mulchandani, i/b Harish Shroff and Co,
for the Appellants.

Mr. Shanay Shah, with Harshil Parekh and Dhyan Shah, i/b
Purnanand & Co, for Respondent Nos. 2 and 2A.

Mr. Girish Godbole, Senior Advocate, with Vidisha Rohira, Divyang
Shukla, i/b LJ Law, for Respondent Nos. 3 to 6.

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2026.05.05
19:19:58 +0530

CORAM : N. J. JAMADAR, J.

RESERVED ON : 29th APRIL 2026

PRONOUNCED ON : 5th MAY 2026

JUDGMENT:

1. This Second Appeal is directed against a judgment and order dated 21st November 2025 passed by the learned District Judge in RCA

No. 158 of 2025, whereby the said Appeal preferred by the Appellants-Plaintiffs, against a judgment and decree passed by the Trial Court in RCS No. 720 of 2015, thereby dismissing the said Suit instituted by the Appellants-Plaintiffs, came to be dismissed.

2. Respondent No.1/Defendant No.1 company was the owner of a larger property. Defendant No.1 promoted a scheme; “Urban Horse Enclave” on one of the plots situated at Survey No. 66/B Hissa No. 4/1 (“the subject plot”). The Defendant No.1-company constructed three blocks consisting of the apartments. The Plaintiffs have acquired right, title and interest in the respective apartments on the basis of the Agreements executed by Defendant Nos. 1 and 2. The Plaintiffs claimed that a layout plan was shown to the Plaintiffs of the adjoining plot, Survey No. 66/B/5 . A representation was made that the said Plot Survey No. 66/B/5 will have a certain kind of layout including open spaces. Eventually, the access to plot No. 64/B/4 was carved out of Plot Survey No. 66/B/5 by erecting a compound wall abutting the open space.

3. It was the grievance of Plaintiffs that after Defendant No.3 acquired the ad-joining Plot Survey No. 66/B/5, the Defendants threatened to reduce the width of their access road by demolishing the old two feet wall. The Defendants have no right to carry out any development in Plot Survey No. 66/B/5 jeopardizing the easementary

rights of the Plaintiffs. The Plaintiffs thus instituted the suit to restrain the Defendants from demolishing the existing two feet compound wall adjoining the access road to the Plaintiffs blocks and from constructing a new compound wall.

4. The Defendants resisted the suit.

5. After appraisal of the evidence, by a judgment and decree dated 5th May 2025, the learned Civil Judge was persuaded to dismiss the suit opining *inter alia* that the Plaintiffs failed to establish that they had acquired any easementary right by prescription or otherwise. In the original plan the width of the approach way for the Plaintiffs was 7.5 meters. In the revised sanctioned plan the width of the way was increased to 9 meters and it was not the case of the Plaintiffs that the width was not adequate or sufficient for approaching the Plaintiffs blocks located in Survey No. 66/B/4.

6. Being aggrieved, the Plaintiffs filed an Appeal before the District Court. By the impugned judgment, the learned District Judge dismissed the Appeal finding no fault with the judgment delivered by the Trial Court. It was noted, *inter alia*, that the Plaintiffs had not clearly pleaded that they had right to use the open plot situated in Survey No. 66/B/5. Nor the Plaintiffs succeeded in establishing that they had any easementary right, and the Defendants threatened to commit breach of

obligations on their part in regard to such easementary right. Thus, the Plaintiffs were not entitled to seek injunctive reliefs.

7. Being further aggrieved, the Plaintiffs are in Second Appeal.

8. I have heard Mr. Amit Shroff, the learned Counsel for the Appellants, Mr. Girish Godbole, the learned Senior Advocate for Respondent Nos. 3 to 6, and Mr. Shanay Shah, the learned Counsel for Respondent Nos. 2 and 2A. With the assistance of the learned Counsel for the parties, I have perused the material on record, including the impugned judgments.

9. Mr. Shroff, the learned Counsel for the Appellants, strenuously submitted that the Trial Court as well as the District Court have approached the controversy from a completely wrong perspective. The Courts below committed a grave error in law in not correctly appreciating that the Plaintiffs were essentially espousing their rights, under the Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, Management And Transfer) Act, 1963 (“the MOFA”) and in the absence of the informed consent the Promoter had no right to make any changes in the layout plan and erect structures to the prejudice of the Plaintiffs.

10. Mr. Shroff would urge that, from the perusal of the documents including the brochure which were tendered before the Appellate Court, it becomes abundantly clear that representations were made to the

Plaintiffs that the layout of adjoining plot Survey No. 66/B/5 would remain unaltered. It is on the basis of the said representation, the price of the apartments constructed on Plot Survey No.66/B/4 was determined. The Defendants thus have no right to alter the said layout and erect multi storied tower on the adjoining plot by substantially reducing the open space and the width of the approach road.

11. To lend support to these submissions, Mr. Shroff placed reliance on a judgment of the learned Single Judge of this Court in the case of **Eternia Cooperative Housing Society Ltd & Ors Vs Lakeview Developers & Ors**¹ and a judgment of the Supreme Court in the case of **Anjuman E Shiate Ali And Anr Vs Gulmohar Area Societies Welfare Group and Ors.**²

12. Mr. Shroff would, thus, urge that, a substantial question of law, whether the right of the occupants of the apartments in the blocks situated on Survey No. 66/B/4 is merely an easementary right or it also amounts to representation under MOFA and can the apartment owners in those blocks restrain the promoter from reducing the open space area in the adjoining plot, when the original promoter had specifically demarcated boundaries on the open access part of the adjoining plot, arises for consideration.

13. Mr. Girish Godbole, the learned Senior Advocate, for Respondent Nos. 3 to 6 submitted that in the Second Appeal, a party cannot be heard

1 2015 (5) Bom CR 680.

2 (2020) 20 SCC 698.

to urge a case which was not pleaded before the Court of first instance. Mr. Godbole would urge an entirely new case was sought to be canvassed before this Court in the Second Appeal. Taking the Court through the averments in the Complaint, Mr. Godbole would urge, at best, the Plaintiffs had pleaded easementary rights over the access provided to the Plaintiffs. The case of violation of the rights of the apartment owners under Section 7 and 7A of MOFA was not at all pleaded, much less proved. Even otherwise, Mr. Godbole would urge, in the facts of the case the restrictions in the matter of alternation in the layout and the development of the remaining plots forming part of the larger property, are not at all attracted.

14. Mr. Godbole banked upon the Agreements executed between the owners and the apartment purchasers which clearly indicate that the project, then developed by Defendant Nos. 1 and 2, was confined to Survey No. 66/B/4.

15. Mr. Shanay Shah, the learned Counsel for Respondent Nos. 2 and 2A supplemented the submissions of Mr. Godbole. Mr. Shah laid emphasis on the fact that before the Trial Court, the controversy revolved around the alleged infringement of the easementary rights of the Plaintiffs.

16. First and foremost, it is imperative to note the case setup by the Plaintiffs in the Complaint. From a meaningful reading of the averments in

the Plaint as a whole, it becomes explicitly clear that the Plaintiffs had asserted easementary rights of access through Survey No. 66/B/5. It was nowhere the case of the Plaintiffs that they had a right to use the open space which forms part of Survey No. 66/B/5, the adjoining plot. On the contrary, it appears that, initially Survey No. 66/B/4, over which the Plaintiffs blocks stand, had a direct access to the public road and, subsequently, the access was provided by the Defendants through Survey No. 66/B/5.

17. A specific case that the Plaintiffs had right to use the open space and amenities which form part of Survey No. 66/B/5 was not at all pleaded by the Plaintiffs. It was in that context, the Plaintiffs had sought the reliefs of perpetual injunction simplicitor in the nature of restraining the Defendants from demolishing the existing two feet compound wall adjoining the access to Plaintiffs buildings and from constructing new compound wall. And the Plaintiffs singularly failed to establish their easementary rights qua Survey No. 66/B/5.

18. Mr. Shroff, attempted to salvage the position by banking upon the layout of Urban Horse Enclave, and brochure of Urban Horse Enclave which was allegedly shown to the purchasers when they purchased apartments in the blocks constructed over Survey No. 66/B/4. The later document was not placed before the Trial Court. The learned District

Judge, declined to admit the said document under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 (“the Code”).

19. Even if the case of the Plaintiffs that a layout of Survey No. 66/B/5 was shown to the prospective apartment purchasers is taken at par, yet, that does not advance the cause of the submission of the Plaintiffs. It was nowhere pleaded by the Plaintiffs that they had a right to use the open space and amenities in Survey No. 66/B/5.

20. In substance, the necessary nexus between the Survey Nos. 66/B/4 and 66/B/5 so as to cause an obligation upon the Promoter not to alter the plan and specifications without obtaining the consent of the purchasers of the apartments in the buildings situated on Survey No. 66/B/4 under Section 7 of the MOFA could not be established. Therefore, the reliance placed by Mr. Shroff on the judgments in the cases of **Eaternia Cooperative Housing Society Ltd & Ors (Supra)** and **Anjuman E Shiate Ali and Anr (Supra)** is completely inapposite. To put it in other words, the facts of the case at hand, do not present a situation which would be governed by the aforesaid legal regime and the pronouncements.

21. The conspectus of the aforesaid consideration is that, the question of law, sought to be formulated and pressed into service by Mr. Shroff, does not present itself for consideration in this Appeal.

22. The concurrent finding of facts cannot be said to have been arrived at by misreading of evidence and misconstruction of documents. Thus, this Court does not find any legal infirmity in the impugned judgments.

23. Resultantly, the Appeal deserves to be dismissed.

24. Hence, the following order;

: O R D E R :

- (i) The Second Appeal stands dismissed.
- (ii) In view of the dismissal of Appeal, Interim Application No.38781 of 2025 and Interim Application No. 38780 of 2025 also stand disposed.

[N. J. JAMADAR, J.]