

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.160 OF 2025
WITH
INTERIM APPLICATION NO.3293 OF 2025

Anita Vijay Gadekar and Ors.

Appellants /
.. Applicants

Versus

Vijay Kisan Mali and Anr.

.. Respondents

.....

- Mr. R. D. Soni, Advocate for Appellants / Applicants.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 03, 2026

P.C.:

1. Not on Board. Mentioned by way of filing praecipe dated 03.02.2026. Perused the praecipe.

2. Heard Mr. Soni, learned Advocate for Appellants / Applicants.

3. This Appeal from Order is filed by wife and on behalf of her two sons. According to Respondent No.1 / Defendant No.1 – husband of the wife claims three-fourth share in the subject suit property. The case of Plaintiff is that claim is based on share in ancestral property. Be that as it may, on 03.03.2025, this Court passed the following order:-

“1. Heard learned counsel for the appellants.

2. Issue notice to the respondents, returnable on 11th June

2025.

3. *In addition to Court notice, learned advocate for the appellants to serve the respondents, by private notice and file affidavit of service.*

4. *The appellants are seeking their undivided share in the property on the ground that it is an ancestral joint family property. Appellant no.1 is wife of respondent no.1 and appellant nos.2 and 3 are their children.*

5. *Prima facie, the appellants would be entitled to seek their share in the suit property. Hence, if any third party rights are created the appellants' rights are likely to be prejudicially affected.*

6. *Hence, during the pendency of the application, there will be ad-interim relief in terms of prayer clause (c).*

7. *Considering the relation between the parties and the nature of dispute, I am of the opinion that the parties should make one genuine attempt to resolve the dispute amicably. The parties are, therefore, at liberty to explore possibility of amicable settlement before the next date."*

4. Mr. Soni persuades the Court to list the matter due to exigency mentioned by him. He would submit that he represents and espouses the cause of Developer who is arrayed as Defendant No.2 in the proceedings before Trial Court. He is Respondent No.2 herein. He would submit that ad-interim relief was granted in terms of relief prayed for in terms of prayer clause (c) by order dated 03.03.2025 thereby putting an embargo on development.

5. He would further submit that prior to passing of the order dated 03.03.2025 25 out of the 29 units which are subject matter of construction and belonging to Developer were already sold by Developer to third parties by registered sale deed and therefore the order would only apply to the remaining four units at that time. He

would further submit that remaining four units were already sold by Developer prior to the above order but no registered documents were entered into or executed as on 03.03.2025.

6. He would submit that Development Agreement conceived and undertaken was in respect of construction of a total of 32 units. He would submit that under the Development Agreement which was executed by husband namely Defendant No.1, Defendant No.2 was required to give three constructed units to him. He would submit that these three units are kept separately apart from the 29 units as noted above. He would submit that those three units are ready for handing over to the parties concerned. He would submit that claim of Plaintiffs in the Suit is to the extent of three-fourth share in ancestral property *qua* Defendant No.1, who is her husband. He would submit that entire project is almost complete to the extent of 95% and the final finishing is remaining and thereafter Developer will have to apply for statutory permissions.

7. He would submit that in that view of the matter and order dated 03.03.2025, matter be fixed and be heard.

8. Plaintiffs shall take cognizance of this order and what is stated hereinabove. It is so because the earlier order dated 03.03.2025 does not record the facts and it is passed on *prima facie* consideration and submissions heard from Advocate for Plaintiffs.

9. If the aforesaid facts are to be applied and the Development Agreement is required to be seen then Developer cannot be held at fault. Development Agreement was signed on 21.07.2023. Mr. Soni fairly concedes that in the Plaint which is filed by Plaintiff which is appended at page No.14 it is *prima facie* seen that there is no relief prayed for setting aside of the Development Agreement. In this scenario, Developer cannot be held at fault because of the dispute regarding share of Plaintiffs in ancestral property in the *lis* between Plaintiffs and Defendant No.1.

10. In that view of the matter, direction given in paragraph No.5 of the order dated 03.03.2025 will have to be qualified and explained by the Plaintiffs – Appellants before me. This is so because rights of the third parties which have already been created in respect of the 29 flats which are already sold by the Developer prior to 03.03.2025 cannot be jeopardised once the development is nearing completion.

11. Hence, parties shall file their Affidavit-in-Reply on or before the next adjourned date with advance copy to the other side.

12. Plaintiffs and Respondents are directed to remain present on the next adjourned date through their Advocates and apprise the Court accordingly.

13. Stand over to 26th February, 2026. To be listed under the caption 'For Directions'.

14. Praeceptum is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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