

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 386 OF 2025
WITH
INTERIM APPLICATION NO. 9865 OF 2025

M/s. Risali Developers

.. Appellant

Versus

Meena (Kamini) Krishna Gaikwad & Ors.

.. Respondents

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- Ms. Preeti Walimbe, Advocate for Appellant
- Mr. Gulabrao W. Awasarmol a/w Mr. Pawan S. Dabhade, Advocates for Respondent No. 1
- Dr. Uday Warunjikar a/w Ms. Gargi Warunjikar, Advocates for Respondent Nos. 2 to 4
- Ms. Shweta S. Shinde a/w Mr. Anand Dande, Advocates for Respondent No. 5

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CORAM : MILIND N. JADHAV, J.**DATE : JANUARY 30, 2026****P. C.:**

1. Heard Ms. Walimbe, learned Advocate for Appellant; Mr. Shejul, learned Advocate for Respondent No. 1 and Dr. Warunjikar, learned Advocate for Respondent Nos. 2 to 4.

2. On 01.10.2025, following order was passed:-

"1. Heard Ms. Walimbe, learned Advocate for Applicant / Appellant; Mr. Awasarmol, learned Advocate for Respondent No.1 and Dr. Warunjikar, learned Advocate for Respondent Nos.2, 3 and 4.

2. In the present case, the impugned order prima facie hurts the Developer who is Appellant before the Court. The lis rather primary lis is between the Respondents namely Respondent No.1 who is original Plaintiff and Respondent Nos.2, 3 and 4, out of whom Respondent No.2 is father of Plaintiff. Suit is filed for partition and entitlement of share in the ancestral property by Plaintiff. Fructification has already taken place. Plaintiff is entitled to her share. It is not denied by her father viz; Respondent No.2.

Both, Plaintiff and Defendants who are Respondents before me are party to Development Agreement with the Developer who is Appellant. Developer has completed substantial development, but because of the Suit filed by Plaintiff and the omnibus direction of restraint passed, which is under challenge in the present Appeal From Order, restraining Developer from dealing with all his flats, the Appellant – Developer is seeking modification of the said order. Developer's project is going on as it comprises of 7 buildings. Developer under the Development Agreement executed with Plaintiff and Defendants is required to hand over 42 flats in total to Respondent No.2 – father and other Respondents. Plaintiff is the sole daughter of Respondent No.2. Her share is not denied by her father. There is a dispute about how much that share should be. Yesterday when the matter was argued, Plaintiff desired 7 flats out of the 42 flats receivable by Respondent No.2 (her father) as her share.

3. Today, Plaintiff is agreeable to accept atleast 5 flats as her share. Respondent No.2 (father)'s consistent position is that Plaintiff is entitled to 3 flats out of the 42 flats as her share. He is ready to offer her the 3 constructed flats identified by him in his Reply Affidavit. Today, Respondent No.2 has also offered in addition 1 (one) office premises on 1st floor to Plaintiff to put an end to the lis. Plaintiff shall take cognizance and apprise the Court accordingly.

4. The impugned order passed by the learned Trial Court in Exhibit '5' proceedings in the Suit is appended at page No.18 of the Appeal From Order and at page No.475 of the Interim Application. According to Plaintiff, there are 4 properties in which Plaintiff seeks her substantive share and right. Out of these 4 properties, two properties are under development which are the subject matter of Suit proceeding filed by Plaintiff.

5. There is a further dispute of Plaintiff with regard to the properties which are being developed by the Appellant - Developer. According to Respondent No.2 – father of the Plaintiff, 3 separate properties have been amalgamated and are the subject matter of development by the Developer before the Court. According to him, 1 out of the 3 properties is his exclusive and self acquired property which admeasures 17 Ares. The remaining 2 plots admeasuring 34 Ares and 33 Ares are ancestral properties wherein Plaintiff will have her substantive share. Share of Plaintiff is not denied in toto by Respondent No.2 – father. However according to Plaintiff, the plot admeasuring 17 Ares is also ancestral property and is not the exclusive domain of her father. This lis will be decided in the Suit proceedings.

6. According to Respondent No.2 – father, share of Plaintiff is only to the extent of receiving 3 constructed flats in the entire development which has been placed on Affidavit which has been filed yesterday and placed before me. However, according to Plaintiff, she is entitled to 7 flats, that undoubtedly would be the subject to the trial. As stated above, today Plaintiff is ready and willing to accept 5 flats only. In the lis between two these private individuals, the Developer who is developing the property cannot and should not suffer. His other purchasers should not suffer. Therefore, the impugned order passed by the learned Trial Court directing a complete embargo and restraint on the Developer requires to be molded and

modified straight away at least to the extent of allowing the development to be carried out by the Developer further which does not concern the lis between the private parties before me. I am informed that Developer has already handed over 33 constructed flats out of 42 flats as promised under the Development Agreement to Respondent No.2 – father. In that view of the matter, Plaintiff's share in the said flats would be only to the extent of either 3 flats or 7 flats or 5 flats whatever the case may be as claimed by Plaintiff subject to adjudication of the lis by the learned Trial Court. Those many flats can be secured, if so required and the impugned order can be set aside and development can proceed further.

7. In view of the above, the impugned order dated 30.04.2024 stands modified and the restraint which is stated in the said order will not apply to the development carried out by the Developer as also the remaining flats which are readied by the Developer for the purpose of development.

8. Rest of the order shall remain as only to the extent of the lis between Plaintiff and Respondent No.2 – father. In so far as the dispute between the private parties is concerned, Dr. Warunjikar, on instructions informs the Court that in addition to the three flats the Respondent No.2 – father is now ready and willing offer one commercial shop on the first floor to the Plaintiff.

9. Today, Plaintiff is present in the Court. Advocate for Plaintiff is directed to take appropriate instructions, if he so desires to accept the offer given by Respondent No.2 and apprise the Court on the next adjourned date.

10. Mr. Awarsarmol, learned Advocate has vehemently submitted that all properties which are the subject matter of development are ancestral properties and therefore Plaintiff has a substantive right and share in all the said properties which is strongly refuted by Dr. Warunjikar. All this can be decided in the Suit proceedings.

11. Further order will be passed in Appeal from Order for disposal on the next adjourned date after hearing the private parties. Respondent No.2 will give details of 2 additional flats if the offer is not accepted by Plaintiff so that appropriate order can be passed in the interregnum for securing Plaintiff's interest till the Suit is decided.

*12. Stand over to **9th October 2025**. To be placed under the caption **'First on Board'**.*

3. In view of the above, grievance of the Appellant before me stands duly addressed. In that view of the matter, the cause of action in the present Appeal from Order (AO) does not survive. The reason for keeping the present AO pending from October till today was on account of the request made by Mr. Awasarmol on behalf of his client

(daughter) having dispute / *lis* for receiving her share in the properties from her father and other relatives duly represented by Dr. Warunjikar. This is a case where this Court made an attempt to see if the father and daughter would reconcile but despite keeping the matter on several occasions and requiring parties to talk to each other it seems that the same has not been finally reconciled. Though Mr. Awasarmol in his usual fairness states that the daughter is ready and willing to accept 3 flats and 1 shop as agreed to be given to her by her own father as her share but it is with a rider / caveat that it would be for the present leaving the right to the daughter to agitate the same later for her share. If that is the case, this Court cannot help the warring Respondents in the present AO. Mr. Awasarmol appearing for daughter who is the Respondent No. 1 before me in the present case has not challenged the impugned order separately. Once that is the position, the only method available to his client is to file substantive proceedings seeking her separate share in partition from her father and other relatives considering that partition is in respect of the properties / share coming to her *qua* the share of the father, other sister and other relatives. It is seen that there are 42 flats available for partition along with shops and offices which are handed over by Appellant Developer to Dr. Warunjikar's client which are for the shares of all parties.

4. Mr. Awasarmol submits that in the pleadings filed by the Appellant / Developer, rights of his client have been accepted by the Developer. That cannot be considered by the Court. As per the principal Development Agreement, the Developer has handed over 42 flats, offices and shops. The dispute of shares is between the father and daughter. However in view of the order dated 01.10.2025, if Respondent No. 1 desires to seek assertion of her rights, she is free to file appropriate proceedings as available to her in accordance with law. All contentions of Respondent No. 1 as also all other Respondent are expressly kept open.

5. Request made by Mr. Awasarmol for modification of the impugned order stands expressly rejected in view of the above reasons. All contentions of Respondents are expressly kept open to agitate in the appropriate proceedings.

6. With the above directions, Appeal from Order is disposed. Interim Application is also disposed.

Amberkar

[MILIND N. JADHAV, J.]

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