IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3646 OF 2026
IN
APPEAL FROM ORDER NO.405 OF 2026

1. Vasundhara Dinanath Gawade	]
2. Prashant Dinanath Gawade	]
3. Harshad Dinanath Gawade	]
4. Axis Housing Private Ltd., Goregaon	] .. Applicants-Appellants

Versus

1. Manilal Khimji Lalan	]
2. Shobha Waman Rawool	]
3. Manohar Waman Rawool	]
4. Mira-Bhayandar Municipal Corporation	] .. Respondents

Mr. Girish Godbole, Senior Advocate, i/by Ms. Pooja Thakkar, Advocate for the Applicants-Appellants.

Mr. Gaurav Joshi, Senior Advocate (through V.C.) with Mr. Amrut Joshi, Mr. Hitesh P. Mishra, Mr. Ashish P., i/by Mr. Hitesh Mishra, Advocates for Respondent No.1.

CORAM : GAUTAM A. ANKHAD, J.

DATE : 22ND MAY 2026
[VACATION COURT]

P.C. :

1. The present Interim Application seeks a stay of the impugned order dated 10th March 2026 in Exhibit-5 passed by the trial Court in

Special Civil Suit No.555 of 2023. The impugned order, annexed at page 307 of the paper-book, grants injunctions in the following terms:-

> *"1. The application is partly allowed.*
>
> *2. The defendant nos.1 to 6 are restrained from creating any third party interest in the suit property and carrying out any construction activities upon the suit property. Further restrained from seeking permission or sanction to any Government Authority in respect of development of the suit property and disturbing the peaceful possession of the plaintiff over the suit property.*
>
> *3. The ad-interim mandatory injunction claimed by the plaintiff is hereby rejected.*
>
> *4. The defendant no.7 is restrained from granting any approval/sanction or layout plan of the defendant nos.1 to 6 in respect of construction of any building or the suit property."*

Brief facts:

2. The suit property originally belonged to one Waman Rawool. In or about 1992-93, a Court Receiver was appointed for a portion of the suit property in proceedings between Waman Rawool and Saraswat Co-operative Bank Limited. Despite that, on 1st March 1994, Waman Rawool purported to execute a Development Agreement along with a Power of Attorney in favour of Respondent no.1/original Plaintiff for a consideration of Rs.25 lakhs ("1994 Development Agreement"). The transaction was on an 'as is where is'

basis. According to Respondent no.1, the said Development Agreement bears the signature of one Dinanath Gawade.

3. On 25th September 2009, the suit property was released from the Court Receiver. Waman Rawool executed a Will on 6th February 2004 bequeathing the suit property to his nephew, Dinanath Gawade. Appellant nos. 1 to 3 are the legal heirs of Dinanath Gawade. Waman Rawool died on 11th December 2005.

4. Between 2007 and 2010, Respondent no.1 issued three public notices asserting rights in respect of the suit property. Thereafter, Respondent no.1 instituted Special Civil Suit no. 460 of 2010 ("2010 suit" or "first suit") before the learned Civil Judge, Senior Division, Thane, *inter alia*, seeking declarations of ownership, specific performance of the 1994 Development Agreement, cancellation of Waman Rawool's Will dated 6th February 2004 and permanent injunctions against the Appellants. For convenience, the reliefs in the 2010 suit are quoted:

> "*(a) That the Plaintiff may be declared as the lawful owner in possession of the suit land.*
>
> *(b) That the Defendants jointly and severally may be directed to execute Sale Deed of the suit land on the name of the Plaintiff.*
>
> *(bb) The Defendants jointly and each severally ordered, decreed and directed to deliver possession of the suit land, more*

particularly described in para no.1 of the plaint to the Plaintiff.

(c) *That Defendants in case deny to execute Sale Deed of the suit land, this Hon'ble Court may appoint Court Commissioner and direct Court Commissioner to execute Sale Deed of the suit land on the name of Plaintiff.*

(cc) *If for any reasons whatsoever, this Hon'ble Court comes to a conclusion that the Plaintiff was not in possession of the suit land, this Hon'ble Court may by an appropriate order and decree issue directions to the Defendants to quit, vacate, handover and deliver vacant and physical possession of the suit land and very part thereof to the Plaintiff.*

(d) *That Defendant nos.1 and 2 in case deny to execute Sale Deed of the suit land, this Hon'ble Court may appoint Court Commissioner and direct Court Commissioner to execute Sale Deed of the suit land on the name of the Plaintiff.*

(e) *Court Receiver under Order 40 Rule 1 of the CPC, 1908 be appointed to take custody of the suit land.*

(f) *Defendant nos.1 to 4 may be restrained from creating third party interest of any in nature of the suit land.*

(g) *The Defendant nos.1 to 4, their agents, Manager, servants, legal heirs etc. may be permanently restrained from taking over possession or disturbing possession of the suit land of the Plaintiff, without following due process of law.*

(h) *Interim relief in terms of prayer clauses (e) and (f) hereof be granted.*

(i) *Will dated 6th February 2004 may be declared as null and void having no effect on title of Plaintiff on suit land.*

(j) *Defendant nos.3 and 4 may be directed as not to create third-party interest upon suit land by taking undue advantage of Will dated 6th February 2004."*

5. Significantly, in paragraph 1 of the original plaint of the 2010 suit, Respondent no.1 has pleaded that he is in lawful possession of

the suit property. The ad-interim reliefs sought in this first suit were rejected by order dated 2nd August 2010. The said order was not challenged. On 5th December 2011 the trial Court observed that the interim application would be heard along with the final hearing of the suit. It may be noted that the plaint was amended only on 2nd August 2019 seeking possession of the suit property, by incorporating pleadings in paragraphs 10(a) and 10(b) and corresponding prayer clauses (bb) and (cc).

6. On 15th July 2011, a registered Development Agreement coupled with an Irrevocable Power of Attorney was executed by Dinanath Gawade and Appellant no.3, in favour of Appellant no.4 ("2011 Development Agreement"). Several other registered instruments were also executed. Dinanath Gawade died on 1st January 2021.

7. Nearly twelve years after the first Suit, on 25th November 2023, Respondent no.1 instituted the present suit being Special Civil Suit No. 555 of 2023 seeking cancellation of the 2011 Development Agreement and consequential reliefs, including injunctions. On 12th December 2023, Respondent no.1 sought ad-interim reliefs, but the same were not granted considering the duration from the cause of

action till the filing of the suit. The trial Court issued notice to the Appellants and posted the matter to a later date. On 22nd December 2023, the Appellants filed their written statements and reply to the injunction application (Exhibit-5). By the impugned order dated 10th March 2026, the trial Court granted the aforesaid injunctions quoted in paragraph no.1 above.

<u>Submissions:</u>

8. Mr. Godbole, learned senior counsel appearing for the Appellants submits that the impugned order is *ex facie* unsustainable inasmuch as the alleged 1994 document is admittedly unregistered and inadequately stamped. It does not create any enforceable right, title or interest in favour of Respondent no.1. Thus the trial Court erred in relying upon Section 48 of the Transfer of Property Act, 1882. Respondent no.1 never acted upon the alleged unregistered 1994 Development Agreement. Respondent no.1 also failed to secure any protection in its favour either in the first suit or this suit, until passing of the impugned order. He submits that substantive and valuable rights have accrued in favour of the Appellants under the registered Development Agreement of 2011. The impugned order itself records that substantial construction activity has already commenced, statutory permissions have been obtained and

considerable investments have been made. In these circumstances, injunction could not have been granted and its continuation will cause irreparable injury to the Appellants and bring the entire development project to a standstill. Without prejudice to the rights and contentions of the Appellants, Mr. Godbole submits that the Appellants are willing to secure two flats valued at approximately Rs.2.35 crores in favour of Respondent no.1, particularly when the consideration allegedly paid under the alleged 1994 Development Agreement is Rs.25 lakhs.

9. Mr. Gaurav Joshi, learned senior counsel appearing for Respondent no.1, submits Dinanath Gawade and the Appellants were fully aware of the rights asserted by Respondent no.1 as well as the pendency of the 2010 suit and yet proceeded to execute the 2011 Development Agreement in favour of Appellant no. 4. Respondent no.1 had performed his obligations under the 1994 Development Agreement by paying consideration of Rs.25 lakhs to Waman Rawool. The 1994 agreement contains a specific covenant restraining Waman Rawool from creating third-party rights in respect of the suit property and that the Gawade family had full knowledge thereof. It is contended that the pendency of the 2010 suit is deliberately

suppressed in the 2011 Development Agreement and that several incorrect statements were incorporated therein. Hence the Appellants are not bona fide purchasers for valuable consideration.

10. Mr. Joshi further submits that the cause of action for filing the present suit arose only in October 2023 when Respondent no.1 was forcibly dispossessed from the suit property. He submits that the Appellants cannot claim equities in their favour as the development permissions were obtained after institution of the present suit. According to him, if the Appellants are permitted to continue construction activities and create third-party rights, the character of the suit property would stand irreversibly altered, thereby rendering any eventual decree for specific performance in the first suit illusory and nugatory. He submits that the impugned order is a discretionary order passed upon consideration of all relevant factors and therefore does not warrant interference in appellate jurisdiction. He relied upon the judgments of the Hon'ble Supreme Court in *Dalpat Kumar & Anr. v. Prahlad Singh*[1], *Wander Ltd. & Anr. v. Antox India P. Ltd.*[2], *Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Ors.*[3],

1 *(1992) 1 SCC 719*
2 *1990 (Supp) Supreme Court Cases 727*
3 *(2024) 11 SCC 351*

Daliben Valjibhai & Ors. v. Prajapati Kodarbhai Kachrabhai & Anr.[4] and contends that this Interim Application and the Appeal ought to be dismissed.

<u>Reasons:</u>

11. Having heard the learned senior counsel appearing for the parties and having perused the record, I find that the Appellants have made out a strong case for grant of interim relief pending hearing and final disposal of the Appeal.

12. The trial Court has proceeded on the basis that Respondent no.1 was entitled to protection under Section 48 of the Transfer of Property Act, 1882 and granted injunctions nearly thirty-two years after the execution of the alleged Development Agreement of 1994. *Prima facie,* such an approach is unsustainable in the present facts. The Development Agreement of 1994 is not admitted by the Appellants. It is an unregistered document and is also stated to be inadequately stamped. Despite purporting to claim rights from 1994, Respondent no.1 did not take any effective steps for enforcement of those alleged rights for almost sixteen years, except issuing three public notices between 2007 and 2010. Respondent no.1 filed the

4 *2024 SCC OnLine SC 4105*

first suit seeking specific performance of the 1994 document only in the year 2010. The application for ad-interim relief was rejected on 2nd August 2010 and the said rejection order admittedly was never challenged. Consequently, Respondent no.1 remained without any protective order in relation to the suit property. Thereafter, Respondent no.1 instituted the second suit in the year 2023 alleging dispossession from the suit property and sought cancellation of the registered Development Agreement dated 15th July 2011 together with consequential injunctions. Even in this second suit, the trial Court rejected the prayer for ad-interim reliefs by order dated 12th December 2023 taking note of the delay between the alleged cause of action and the institution of the suit. That order was also not challenged. Thus, from 1994 till the passing of the impugned order dated 10th March 2026, Respondent no.1 remained without any interim protection whatsoever in respect of the suit property.

13. The record indicates that when the 1994 Development Agreement was purportedly executed, at least a part of the suit property was under the custody of the Court Receiver. In the original plaint filed in the first suit in 2010, Respondent no.1 has asserted possession over the suit property. However, by way of amendment

carried out in the year 2019, Respondent no.1 introduced additional pleadings at paragraphs 10(a) and 10(b) and prayers (aa) and (bb) seeking recovery of possession. Then in 2023, the present suit is filed alleging dispossession. This inconsistent stand on possession and the enforceability of the rights now claimed by Respondent no.1 casts a serious doubt on the case of Respondent no.1. In the interregnum, a duly stamped and registered Development Agreement dated 15th July 2011 is executed. By virtue of Explanation I to Section 3 of the Transfer of Property Act, 1882, Respondent no.1 is deemed to have notice of the registered agreement. Respondent no.1 admittedly claims to be a developer and investor carrying on land development business in the Mira-Bhayander area for several decades. *Prima facie,* it is difficult to accept that Respondent no.1 was unaware of the registered instrument of 2011 for over a decade. There is no satisfactory explanation from Respondent no.1 for the gross delay in instituting proceedings to challenge the transaction only in the year 2023. Despite claiming rights since 1994, Respondent no.1 neither secured conveyance nor obtained effective protection for over three decades. The prolonged inaction weakens the discretionary relief claimed by Respondent no.1 on the basis of Section 48 as against the Appellants who claim under a registered instrument. In these circumstances, in my *prima facie* view, the trial Court in this second suit could not have proceeded on the basis that Respondent no.1 possessed a superior right to defeat the subsequent registered transaction of 2011.

14. The judgment in *Daliben Valjibhai*, relied upon by Mr. Joshi, does not advance the case of Respondent no.1. The said decision was not rendered in the context of Section 3 of the Transfer of Property Act, 1882. In that case, the High Court had allowed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and rejected the plaint. The Hon'ble Supreme Court held that such rejection was erroneous, since the suit had been instituted immediately upon the plaintiffs discovering that the registered document in question was forged. The Hon'ble Supreme Court observed that instead of confining its scrutiny to the averments in the plaint, the High Court had ventured into issues touching upon the merits of the matter. The said decision is on different facts and has no application to the facts of the present case.

15. The judgments in *Dalpat Kumar and Ramakant Ambalal Choksi* undoubtedly lay down the well-settled principle that an appellate Court would ordinarily be slow to interfere with an order

passed in exercise of discretionary jurisdiction unless the discretion is shown to have been exercised arbitrarily, perversely or in disregard of settled principles. Equally, the said judgments reiterate that a plaintiff seeking injunction must establish not only a prima facie case, but also balance of convenience and irreparable injury. The conduct of the party seeking equitable relief is also a relevant and material consideration. In *Dalpat Kumar* the Hon'ble Supreme Court has held:

> *"5. … Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."*

In my view, the aforesaid principles, when applied to the facts of the present case, are against the continuation of the injunction granted by the trial Court.

16. A party invoking equitable jurisdiction must demonstrate diligence, fairness and bona fides. A litigant who remains inactive for a prolonged period and permits another to openly deal with the property cannot claim equitable protection as a matter of course. Respondent no.1 himself is an experienced developer. The record indicates that statutory permissions are obtained and substantial development activities have progressed. In my view, the trial Court erred in applying the provisions of Section 48 of the Transfer of Property Act, 1882, as no ground has been made out to attract the said provision.

17. Insofar as balance of convenience is concerned, in my view the same lies in favour of the Appellants. Continuation of the injunction granted by the trial Court would stall the entire development project and expose the Appellants to serious financial and commercial prejudice. The suit property cannot remain indefinitely frozen merely because a suit has been instituted after prolonged inaction of 16 years, a second suit after 12 years of the Appellant's agreement and without protective orders. The interests of Respondent no.1 can be

adequately safeguarded during pendency of the proceedings by imposing appropriate conditions of securing the amount in dispute. However, Mr. Joshi, on instructions, states that Respondent no.1 is unwilling to accept the without prejudice terms suggested on behalf of the Appellants. In any event, it would remain open to Respondent no.1 to pursue an appropriate claim for damages.

18. In the aforesaid circumstances, I am of the *prima facie* view that the trial Court has exercised its discretion arbitrarily and in disregard of settled principles governing grant of interim injunctions. The trial Court has failed to consider the rejection of reliefs in the earlier proceedings, the unexplained delay on the part of Respondent no.1, the absence of any interim protection for more than three decades and the substantial development already undertaken pursuant to the registered transaction of 2011. The impugned order warrants interference as the exercise of discretion by the trial Court appears to be palpably erroneous and unsustainable. In these circumstances, I am satisfied that the Appellants have made out a case for grant of interim relief pending hearing and final disposal of the Appeal from Order. Hence, Interim Application no.3646 of 2026 is allowed in terms of prayer clause (a), which reads as under:

"a. Pending the hearing and final disposal of the present Interim Application, the execution, operation, implementation and effect of the impugned Judgment and Order dated 10th March 2026 passed by the 4th Joint Civil Judge, Senior Division, below Exhibit-5 in Special Civil Suit no.555 of 2023 may kindly be suspended and stayed."

19. List the Appeal on 1st July 2026.

20. After the order was pronounced, Mr. Ashish Pyasi, learned counsel for Respondent no.1 seeks a stay of this order for a period of 4 weeks. This is opposed by Mr. Godbole. For the reasons stated above and since this is an interim order vacating the injunction passed after more than two decades after the Appellant's Development Agreement is executed and registered, the application for stay is rejected.

[GAUTAM A. ANKHAD, J.]

BHARAT DASHARATH PANDIT

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