

## ANNEXURE 39

### IN THE HIGH COURT OF JUDICATURE AT BOMBAY

### CIVIL APPELLATE JURISDICTION

### CIVIL WRIT PETITION NO. 5986 OF 2014

**DIST: THANE**

Shrutika construction & Anr : Petitioners

V/s.

Shri. Shreeniwas Waman Oak & Ors : Respondents

### SYNOPSIS

| Date       | Events                                                                                                                                                                                                                         |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1987       | Respondents No. 1 & 2 executed Agreement for Sale of 60 R plot of land in favour of Respondent No. 2 for a consideration of Rs. 35,000/- out of which Rs. 25,000/- was paid th the time of the execution of Agreement for Sale |
| 07.12.2009 | Respondent No. 1 & 2 executed a sale deed in favour of Respondent No. 3 for 60 R plot of land out of S. No. 7/1 of Village, Kharvai, which has been registered with the Sub-registrar's office.                                |
| 12.12.2011 | The Petitioners after inspecting all the documents entered into a Development Agreement with Respondent No. 3, duly registered with the Sub Registrar Office No.3 at Ulhasnagar.                                               |
| 13.01.2012 | The Petitioners got the property measured through T.I.L.R, and after completing all the procedures, put the proposal for sanction with Kulgaon Badlapur Municipal Corporation.                                                 |

|            |                                                                                                                                          |
|------------|------------------------------------------------------------------------------------------------------------------------------------------|
| 02.05.2013 | Respondent No.1 & 2 filed a Suit for perpetual prohibitory injunction against Respondent No. 3 and Petitioner before CJJD at Ulhasnagar. |
|            | The petitioners and Respondent No. 3 appeared and filed their Written Statement.                                                         |
| 03.05.2013 | Initially Court granted an order of status quo in favour of Respondent No. 1 & 2, below Ex. 5.                                           |
| 02.07.2013 | The C.J.J.D. Ulhasnagar, vacated the Status Quo order granted by its order below Ex. 16.                                                 |
|            | Respondent No. 1 & 2 filed an application for amendment of the plaint.                                                                   |
|            | Petitioners and Respondent No. 3 challenged the same by filing their reply.                                                              |
| 17.02.2014 | The Court of C.J.J.D. Ulhasnagar allowed the Amendment Application.                                                                      |
|            | Hence the present Petition.                                                                                                              |

#### **POINTS TO BE URGED**

As grounds taken in the Memo of Petition.

#### **ACTS TO BE APPLIED**

1. Constitution of India
2. Code of Civil Procedure, 1908.
3. Contract Act.

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**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 5986 OF 2014**

**DIST: THANE**

1. **Shrutika Construction,** )  
Through their Proprietor Shri )  
Sandesh Shyamsundar Sable (as )  
per Development Agreement) )  
**M/s. Shrutika Construction,** )  
Through their Proprietor Shri )  
Sandesh Shyamsundar Sable, )  
Age Adult, Occ. Business, having )  
its office at B/7 Sai Sagar )  
Complex, Near HDFC Bank, Palm )  
Beach Road, Sector 13, Sanpada, )  
Navi Mumbai. )

... Petitioners  
(Or. Def. No. 2)

V/s.

1. **Shri Shreeniwas Waman Oak,** )  
Age 82 Years, Occ. Advocate, )
2. **Shri Prabhakar Waman Oak,** )  
Age 71, Years Occ. Retired )  
Both residing at 'B' Wing, Vikas )  
Complex, Thane (W), Tal & Dist. )  
Thane, Plaintiff No. 1 & 2 being )  
represented through their )  
Constituted Attorney **Shri Azam** )  
**Yusuf Kohari,** Age 54 Years, )  
Occ. Business, residing at 169 )  
Kohari Mohallah, Badlapur Gaon, )  
Tal. Ambarnath, Dist. Thane. )
3. **Smt Charubai Harihchandra** )  
**Dhumal,** Age Adult, Occ. )  
Agriculture, residing at Mankivali, )  
Badlapur (E), Tal. Ambarnath, )  
Dist Thane. ) ... Respondents

**THE PETITIONERS ABOVENAMED MOST RESPECTFULLY**  
**SUBMITS AS UNDER**

1. The Petitioners are the Original Defendant Nos. 2, in a suit filed by the Respondent Nos. 1 & 2 through their Power of Attorney Holder Shri Azam Yusuf Kohari bearing Suit No. 156 of 2013 in the Court of C.J.J.D. Ulhasnagar at Ulhasnagar.
2. The facts leading to the present petition are as under:
  - a. The petitioners submit that, Respondents Nos. 1 & 2 are the owners of land bearing S. No. 7/1 at Village Kharvai

admeasuring about 1 H 93.07 R including Potkharaba of 51 R, revenue assessment Rs 3.60 P. By Agreement for Sale executed between Respondent Nos. 1, 2 & 3 on 30.08.1987, the Respondent No.1 and 2 have sold said land to Respondent No.3 for the consideration of Rs. 35,000/- out of which Rs. 25,000 paid on the date of execution of Agreement for Sale dated 30.08.1987. In pursuance of the Agreement, Respondent no. 1& 2 in 1987, placed Respondent no. 3 in physical & actual possession of the part of the plot of land as per the location as agreed amongst themselves. Thereafter on 07.12.2009, in pursuance of the said Agreement for Sale Respondent Nos.1, 2 executed a Sale Deed in favour of Respondent No.3 for 60 R land out of the total area of Land 1 H 93.07 R; That the Sale Deed is duly registered with the Sub-Registrar's Office No. 2 bearing No. 7421/2009. It is pertinent to note that, while executing the Sale Deed, balance amount of Rs. 10,000/- has been paid by the Respondent No.3 to Respondent Nos. 1 & 2. That para 2 of the Sale Deed dated 07.12.2009 specifically contended that, possession of the said plot is given with all rights attached with the said plot of land. It specifically shows that, the 60 R plot of land is carved out separately by mutual understanding Respondent 1 and 2 have sold to the land to Respondent No. 3. The Respondents no. 1 & 2, had completed the sale after 22 years in favour of Respondent No. 3 which shows that there was no disagreement nor any dispute as to the boundries or the location of the part of land. By describing the boundries, Respondent Nos. 1 & 2 hande over physical possession of the said plot of land to the Respondent No.3 as admitted in the

Sale deed. Hereto annexed and marked Exhibit "A" is the copy of Sale Deed dated 07.12.2009.

- b. The Petitioners submit that, the Respondent No. 3 due to lack of knowledge and experienced in the field of construction, approached the Petitioner and expressed her desire to develop the said plot of land. The Respondent thereafter handed over the necessary documents to the Petitioner and showed the boundaries of the land at the site. The Petitioner being fully satisfied with the rights and title possessed by Respondent No. 3, entered into Development agreement dated 12.12.2011. The Petitioner thereafter carried out measurement of the land and got it surveyed by T.I.L.R. on 13.01.2012 and prepared the map in sufficient compliance of due procedure established by the law. Hereto to annexed and marked as EXHIBIT 'B' is the copy of Registered Development Agreement dated 12.12.2011 executed between Respondent No. 3 and Petitioner. The Petitioner rely upon Map prepared by TILR, Ambernath.
- c. The Petitioner submits that the Respondent No.3 executed Registered Development Agreement dated 12.12.2011 in favour of Petitioner granting development right in respect for area 40 gunthas out of 60 gunthas purchased from Respondent 1 and 2 by Sale Deed dated 07.12.2009. The said Development Agreement is duly registered at Ulhasnagar Sub-Registrar office UHN/2/12674 of 2011.
- d. The Petitioner submits that the Respondent No.3 executed Registered Development Agreement dated 12.12.2011 in favour of Petitioner granting development right in respect

for area 42.5 gunthas instead of 40 Gunthas out of 60 gunthas purchased from Respondent 1 and 2 by Sale Deed dated 07.12.2009. The said rectification deed is duly registered at Ulhasnagar Sub-Registrar office under Sr. No. UHN/2/01925 of 2012. The Petitioner are constructing Building on said land and third party interest are created in respect of Flats as per Development Agreement.

- e. The Petitioner submits that, Respondent Nos. 1 & 2 and their constituted Attorney are well aware of the commencement of construction activities started by the Petitioner, but Respondent Nos. 1 & 2 remained silent for more than a year. The Respondents initiated legal proceedings much later with an intention to create hurdle in the construction being carried out by the Petitioner. The Petitioner submit that, Respondent No. 1 & 2 filed a Civil Suit, bearing No. 156 of 2013 in the Court of C.J.J.D. Ulhasnagar for simplester Injunction, the Petitioners submit that, initially the Civil Court granted the order of Status Quo but same was vacated by the Civil Court by an order dated 02.07.2013, below Ex. 16. Hereto annexed and marked as **EXHIBIT 'C'** (Colly) is copy of the said Plaint and Order dated 02.07.2013 passed by the C.J.J.D. Ulhasnagar.
- f. The Petitioner further submits that, the Petitioner and Respondent No. 3 filed their Written Statements and contested the suit. That the case pleaded by the Respondent Nos. 1 & 2 is denied by the Petitioner and Respondent No. 3. Hereto annexed and marked **Exhibit "D"** is the copy of Written Statement filed by Petitioner and Respondent No.3.

- g. The Petitioner further submits that, It is alleged by the Respondent Nos. 1 & 2 that they appointed a new lawyer during the pendency of the suit and their new lawyer advised to take the plea of partition of property in the Plaint. Therefore, Respondent Nos. 1 & 2 filed an Application under Order 6 Rule 17 of the Civil Procedure Code 1908 for amending the pleading in the Plaint. Accordingly Respondent Nos. 1 & 2 decided to incorporate a prayer for partition by meets and bounds. Hereto annexed and marked **EXHIBIT 'E'** is the copy of the amendment Application dated 16.09.2013.
- h. The Petitioner further submits that, after receipt of the copy of the Amendment Application, the Petitioner filed their reply and opposed the Amendment Application taken out by the Respondent Nos. 1 & 2. The Petitioner opposed the Amendment Application on the ground that, the amendment, would change the nature of the entire suit. The Respondents initially filed a Suit for simplicitor Injunction and if the amendment sought by the Respondents is allowed, then the nature of the present suit will change. Hereto annexed and marked as **EXHIBIT 'F'** is the copy of the reply filed by the Petitioner and Respondent No.3, to the Amendment Application.
- i. The Petitioners submit that, the Trial Court, after hearing the parties, pleased to allow the Amendment Application. Hereto to annexed and marked as **EXHIBIT 'G'** is the copy of the order dated 17.0.2014 passed by the C.J.J.D. Ulhasnagar, Dist. Thane.

3. Feeling aggrieved by the order dated 17.02.2014 passed by the C.J.J.D. Ulhasnagar, Dist. Thane, the Petitioners is approaching this Hon'ble High Court, under Article 227 of the Constitution of India on various grounds amongst other as detailed below, without prejudice to each other.

**GROUND**

- (i) That the order passed by the Trial Court is against the principles of natural justice, equity and good conscience.
- (ii) That the order passed by the Trial Court is without considering the pleadings and factual aspects in the matter.
- (iii) That the Trial Court committed error in allowing the Amendment Application without considering the fact that initially the Suit was filed for the purpose of simplicitor Injunction. Therefore the Court has to consider the fact that whether amendment sought to be incorporated is necessary for the purpose of determining the real question in controversy between the parties.
- (iv) That the Trial Court committed a grave error in not considering the fact that the Sale Deed executed by the Respondent Nos. 1 & 2, in favour of Respondent No. 3, speaks itself that the property of 60 R is separately carved out and sold, therefore question of portion of suit property as alleged does not require to amend the plaint.
- (v) That the Trial Court ought to have hold and come to the conclusion that the amendment of partition in the

simplicitor injunction suit is all together irrelevant and not necessary for dissolving the issue between the parties.

(vi) That the Trial Court failed to appreciate that considering the contents of Sales Deed, one can presume that 60 gunthas of plot of land is separated while executing the Sale Deed and boundries are fixed at the time of sale. Therefore the amendment is totally irrelevant and against the contents of Sales Deed executed between the parties. It is pertinent to note that the contents of Sale Deed are not challenged by respondent Nos.1&2.

(vii) That the impugned order dated 17.02.2014 passed by the Trial Court is otherwise illegal, bad in law and perverse and hence required to be quashed and set aside.

5. The Petitioners, therefore pray that;

(a) Rule may be issued, record and proceedings of Regular Civil Suit No. 156 of 2013 on the file of CJJD at Ulhasnagar may kindly be called for the perusal of this Hon'ble Court and after considering the legality and propriety, the impugned order dated 17.02.2014 may kindly be quashed and set aside.

(b) Pending hearing and final disposal of the Writ Petition, further hearing of the Regular Civil Suit No. 156 of 2013 may kindly be stayed.

- (c) Ad-interim relief in terms of Prayer Clause (b) may kindly be granted.
- (d) Any other just and equitable orders in the interest of justice as may deed fit and proper to this Hon'ble Court be passed
- (e) Cost.

Mumbai

Dated the 16<sup>th</sup> day of April, 2014.

Advocate for the petitioners

**VERIFICATION**

**I, SANDESH SHYAMSUNDAR SABLE**, Proprietor of M/s. Shrutika Construction, the Petitioner abovenamed, do hereby state under solemn affirmation that whatever is stated in the foregoing paragraph Nos. 1 to 5 are true and correct to the best of my knowledge and belief.

Solemnly affirmed at Mumbai  
on this 16<sup>th</sup> day of June, 2014

)

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Petitioner

Before me

Advocate for the Petitioner

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## **CIVIL WRIT PETITION**

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Dated this 16<sup>th</sup> day of June, 2014