

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 212 OF 2025
WITH
INTERIM APPLICATION NO. 6806 OF 2025
IN
APPEAL FROM ORDER NO. 212 OF 2025

Rashmin Khimji Shah and Anr.

Appellants /
.. Original Plaintiffs

Versus

Gulzar Yunus Patel and Ors.

Respondents /
.. Orig. Defendants

-
- Ms. Simil Purohit, Senior Advocate a/w. Mr. Rajesh Kachare, Mr. Kevin Pereira, Advocates i/by Mr. Chinmaya Acharya for Appellants.
 - Mr. Sagar Paspohe a/w. Mr. Aditya Nikam and Mr. Ashish Piyazi, Advocate for Respondent / Defendant No.15.
 - Mr. Kailas Dewal a/w. Mr. Yash Dewal, Advocates for Respondent / Defendant No.18.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 20, 2025.

P.C.:

1. Heard Mr. Purohit, learned Senior Advocate for Appellants; Mr. Paspohe, learned Advocate for Respondent / Defendant No.15 and Mr. Dewal, learned Advocate for Respondent / Defendant No.18.

2. Mr. Purohit, learned Advocate appearing on behalf of Appellants has taken me through the facts of the present case. *Prima facie* after hearing, it is seen that the facts which are argued by him are duly substantiated by documentary evidence. Regarding

interpretation of the said documentary evidence, it would be subject to filing of Affidavits by the contesting Respondents as there are some objections. Today before me there are two principal contesting Respondents namely Defendant No.15 and Defendant No.18 (Developer). Defendant No.15 is the protagonist.

3. The suit property in respect of which Plaintiffs have approached the Trial Court is ad-measuring approximately 3700 square meters which was agreed to be given to Plaintiffs by virtue of Memorandum of Understanding (MOU) executed by Defendant No.15. Suit property admittedly formed part of larger property ad-measuring 16000 square meters which now rather in the recent past has been sold by Defendant No.15 to Defendant No.18 for a much larger consideration.

4. As argued by Mr. Purohit from the record of the case it is seen that the suit property belonged originally to one Mr. Patel who was its original owner and pursuant to his demise his legal heirs came into the picture. There is an Agreement executed by original owner alongwith Defendant No.13, partnership firm comprising of Defendant No.15 as its Managing Partner and his other partner called one Jasumati Shah. However in the Agreement it is stated that possession of the larger property was placed in the hands of Defendant No.15 and his other partner alongwith a Power of Attorney. This aspect of the

entire larger property having been placed in possession of Defendant No.15 is disputed by Defendant No.18 who is now inact seized with the larger property. That would be an issue which would fall outside the scope of Plaintiffs' case for the present.

5. It is seen that the original owner passed away and thereafter his legal heirs entered into a similar second Agreement with Defendant No.16, another partnership firm comprising of Defendant No.15 and the said Jasumati Shah as the other partner. That second firm happens to be arrayed as Defendant in the present array of parties. Defendant No.15 and the said Jasumati Shah are partners of the said firm M/s. Shivani Developers (Defendant No.16). Thereafter Defendant No.15 by virtue of MOU executed with Plaintiffs agreed to sell / transfer one portion ad-measuring 3700 square meters out of the larger property to the Plaintiffs.

6. Mr. Dewal would also inform the Court prior that to the said MOU, Defendant No.15 had sold the entire larger portion to Defendant No.14 on 12.09.2006. However because of the dispute between Defendant No.14 and Defendant No.15 Suit came to be filed in the City Civil Court which was nomenclatured as Special Civil Suit No.539 of 2006 wherein on learning about the same, Plaintiffs since they had also executed the MOU with Defendant No.15 sought its impleadment and were impleaded in the said Suit.

7. After the aforesaid events, Defendant No.15 executed conveyance in favour of Plaintiffs, but it was not registered. However under the said conveyance an amount of Rs.5.41 crores was paid over by Plaintiffs to Defendant No.15. Mr. Purohit clarifies that the said conveyance was executed by heirs of the original owners of Patel family. He further clarifies that apart from the above, Rs.50 lakhs were to be paid to the original owners / legal heirs of the original owners which the Plaintiffs are ready and willing to pay. He would submit that Special Civil Suit No.539 of 2006 however came to be withdrawn unconditionally in the year 2024.

8. This was probably in view of the fact that Defendant No.15 sold the entire larger portion ad-measuring 16000 square meters to Defendant No.18. His grievance is that the area ad-measuring 3700 square meters which was agreed to be sold to the Plaintiffs by virtue of the MOU and the conveyance (though not registered) and Plaintiffs having parted with the amount of Rs.5.41 crores is covered in the larger portion which is now with Defendant No.18. Defendant No.18, in the meanwhile has started development of the entire larger property. Details of the said development are not placed on record. Nevertheless, appropriate Affidavit shall be filed and the Court shall be apprised about the same.

9. Defendant No.15 is represented by Mr. Paspohe. *Prima facie* the action of Defendant No.15 in the aforesaid incidents speaks volumes but at the end of the day a party or litigant who gets affected ultimately knocks the doors of the Court. Plaintiffs before me filed the Suit before Trial Court wherein injunction is refused against Defendant No.18.

10. Another important development which has been conveyed by Mr. Dewal, learned Advocate appearing on behalf of Defendant No.18 is the fact that the entire consideration in respect of transfer and sale of 16000 square meters of the larger portion to Defendant No.18 has not been paid over to Defendant No.15. Substantial portion thereof is still withheld by Defendant No.18. That shall be placed on Affidavit. Though it is assumed that it would be far in excess Rs.5.41 crores which was paid by Plaintiffs for which the Plaintiffs have rushed to the Court, however in equity placing an embargo on the development and granting injunction against Defendant No.18 without all details been placed on record would also not be fair.

11. For the moment, a direction to Defendant No.18 not to pay any further amount to Defendant No.15 or any other partners of Defendant No.15 to the extent of Rs.5.5 crores in order to protect the substantive interest of the Plaintiffs before me can be passed.

12. In this regard the statement made by Mr. Dewal in the previous order dated 22.04.2025 therefore shall stand continued.

13. Respondents in the present Appeal From Order are directed to file their respective Affidavit-in-Reply within a period of four weeks from today so as to enable the Court to ascertain the factual situation and status.

14. Rejoinder, if any, is directed to be filed within two weeks thereafter.

15. Liberty to apply to Appellants / Plaintiffs for seeking any further directions / orders after the Affidavit-in-Reply is filed.

16. Stand over to **15th January 2026.**

[MILIND N. JADHAV, J.]

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by AJAY
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Date: 2025.11.20
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