

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).8400-8401 OF 2015**

M/s MULTICON BUILDERS

... Appellant(s)

VERSUS

SUMANDEVI AND OTHERS

... Respondent(s)

J U D G M E N T

RAJESH BINDAL, J.

1. The present appeals have been filed against the orders¹ passed by the High Court², *vide* which the order³ passed by the Trial Court⁴ was set aside by the learned Single Judge.

¹ Dated 10.09.2014 in FA NO.285/2012 & 24.04.2015 in MCA No.1222/2014 in FA No.295/2012

² High Court of Bombay at Nagpur

³ Dated 27.02.2012 in Special Civil Suit No.1017 of 1994

⁴ 4th Joint Civil Judge, Senior Division, Nagpur

2. Briefly stating the facts of the case are that a civil suit was filed by Sheela widow of Narendra Fiske for declaration, partition and separate possession of the family property. In the aforesaid suit, counter claim was filed by the defendant nos.1, 4 to 8. The preliminary decree was passed by the Trial Court on 27.02.2012 determining the shares of the plaintiff and defendant nos.1 to 8. The defendants were restrained from alienating the suit property till partition takes place by metes and bounds. The preliminary decree passed by the Trial Court was not challenged by the plaintiff and defendant nos.1 to 8. Defendant no.9-appellant herein was held to be having no right, title or claim in the suit property. The defendants were directed to demolish the construction raised in violation of the Municipal Laws. It is the aforesaid preliminary decree which was challenged only by the defendant no.9, namely, the present appellant before the High Court. The appeal was dismissed, while modifying the operative part of the order of the Trial Court only to the extent that the defendant nos.2 and 9 were directed to demolish the construction on the suit plot forthwith.

3. The issue was sought to be raised only by the appellant, who is not a member of the family as such but is claiming his rights through some of the co-sharers. The plea of the appellant was that the respondent no.2 – Chandrashekhhar Deshmukh had transferred his

share to him with the partition of the property amongst the plaintiff and defendant nos.1 to 8, his rights are adversely affected as he has spent huge amount in raising construction on the plot.

4. After hearing the learned counsel for the parties, in our view, the order passed by the Trial Court passing the preliminary decree in a partition suit as upheld by the High Court, does not deserve interference by this Court as admittedly there is no challenge to the same by any of the co-sharers (family members) of the property in dispute with reference to their respective shares. The final decree is yet to be passed. At that stage the property will be divided by metes and bounds. The preliminary decree is being contested only by the appellant who claimed that defendant no.2 – Chandrashekhar Deshmukh had transferred his share to him. In some part of the property two residential houses are located which are stated to be in occupation of Chandrashekhar Deshmukh (Respondent No.2) and Chandrakant Deshmukh (Respondent No.3) whereas on the other part commercial complex has been constructed, in which the appellant is claiming interest.

5. We have no doubt that in the process of passing final decree for partition of the property by metes and bounds, the court below will consider all aspects in terms of settled principles of law for that

purpose. In case any property in possession of any of the co-sharers comes to his share it can very well be protected.

6. In our view, demolition of the already constructed buildings may not be in the interest of any of the parties as the same can be considered at the time of passing of final decree, with reference to the construction, authorised by the local authority. We are not expressing any opinion on the construction raised unauthorisedly.

7. For the aforesaid reasons, the impugned orders of the High Court are modified to the extent mentioned above. The appeals are accordingly disposed of. The Trial Court will proceed further for passing the final decree. There shall be no order as to costs.

8. As the matter is quite old, the Trial Court is directed to expedite the disposal of the case. We may clarify that we have not expressed any opinion on the merits of the controversy.

.....J
(VIKRAM NATH)

.....J
(RAJESH BINDAL)

New Delhi
November 06, 2023.