



appreciation of evidence, came to the prima facie conclusion that the plaintiffs had not made out any case for grant of injunction. The Appellate Court dismissed the appeal holding that the defendants were carrying out construction as per the approved plans and in view of the acquisition of part of the property in the year 1992, the plaintiffs were entitled to carry out constructions in terms of approved plans. The Appellate Court also held that the plaintiffs had not proved fraud alleged to have been played by the defendants in obtaining fresh permissions/ approvals from the competent authorities. The Appellate Court also held that the plaintiffs had suppressed the fact that a part of the property was acquired in the year 1992. The Lower Appellate Court also held that the predecessor-in-title of the plaintiffs had consented for constructing building in the plot from Survey No. 68/8 provided an access of 3 meters was left for the property bearing survey No. 68/8/A and in fact from the approved plan, they had maintained an access of 6 meters width. The Lower Appellate Court also held that the construction of the building had already started and the work, which had reached upto plinth level, was complete; the columns of first and second slab were complete; work of centering and shuttering of second slab was in progress at the time of suit was filed. The Lower Appellate Court held that since the construction was at considerable advanced stage and the defendants must have invested huge amount in carrying out the construction, the plaintiffs were not entitled to injunction sought for.

2. Mr. Usgaonkar, learned Senior Counsel appearing for the petitioners submitted that fresh approvals/ permissions obtained by the defendants, were obtained by playing fraud on the authorities and as such, the plaintiffs are entitled to injunction sought for. Learned Counsel further submitted that the findings of both the Courts below refusing to grant injunction as sought for by the plaintiffs, are patently unsustainable in law and both the Courts have erred in not considering that the defendants are not entitled to carry out construction in terms of the fresh permissions/ approvals. Mr. Usgaonkar submitted that the petitioners/ plaintiffs are restricting their relief in the writ petition to the extent of not granting occupancy certificate in favour of the defendants. In support of his submissions, Mr. Usgaonkar relied upon the following judgments :

(i) Hindustan Pencils (P) Ltd. Vs. India Stationery Products Co. and Another, .

(ii) Real Estate Agency Vs. Model Co-operative Housing Society Ltd. and 10 others; 1990(1) GLT (291) and

(iii) Judgment of House of Lords in the case of Joseph Constantine Steamship Line Ltd., Vs. Imperial Smelting Corporation, Ltd. the Kingswood; 1941(2) AELR 165.

3. Per contra, Mr. Lotlikar, learned Senior Counsel for respondent nos. 1 and 2 supported the impugned orders and submitted that both the Courts have arrived at correct findings based on appreciation of the materials placed by both sides and have exercised the discretion against the plaintiffs and, therefore, no case is

made out for interference by this Court in exercise of writ jurisdiction. According to Mr. Lotlikar, the plaintiffs had also suppressed the fact about the acquisition of portion of the property in the year 1992 and on this ground alone, the plaintiffs are not entitled to equitable relief of injunction. He further submitted that the defendants have obtained fresh licences / approvals after disclosing the factual position arising subsequent to the acquisition of the portion of the property and in absence of challenge to the approvals/ permissions granted by the competent authorities, the suit filed by the plaintiffs itself is not maintainable. Mr. Lotlikar submitted that the relief of injunction in so far as grant of occupancy certificate is concerned as sought by the learned Counsel for the petitioners, has not been sought either in the application of injunction nor in the petition. Therefore, no case is made out for interference by this Court.

4. Mr. Menezes, learned Counsel for respondent No. 3, adopted the argument of Mr. Lotlikar and submitted that both the Courts below have rightly held that the plaintiffs have not discharged the burden of proving that the defendants had obtained fresh permissions/ licences by fraud since no particulars of fraud have been given. He further submitted that the predecessor-in-title of the plaintiffs had permitted the defendants to carry out the constructions by keeping road of 3 meters" width and, therefore, this is not a fit case for interference by this Court with the concurrent orders passed by both the Courts below.

5. Having considered the rival submissions and having perused the record, I am of the considered opinion that no case has been made out for interference with the impugned orders passed by both the Courts below. The Lower Appellate Court has correctly analysed the materials on record and has come to the conclusion that the plaintiffs have not made out any case for grant of injunction. Firstly, the Lower Appellate Court has rightly held that the plaintiffs have not proved any fraud on the part of the defendants. The defendants had obtained all the licences/ permissions after disclosure of the factual situation, more particularly about the acquisition of part of the property in the year 1992. Moreover, admittedly, the construction has reached in advanced stage and at this stage, it would not be appropriate for this Court to restrain grant of occupancy certificate in favour of the defendants after the defendants have invested substantial amount in construction of the building. In so far as the authorities relied upon by Mr. Usgaonkar are concerned, none of the authorities advance the case of the petitioners since neither the plaintiffs have been able to establish any fraud on the part of the defendants in obtaining fresh licences / permissions nor establish any representation on behalf of the defendants or the vendors of suit plots at the time of entering into an agreement. In view of the above, I am of the considered opinion that this is not a fit case in which this Court should exercise extra-ordinary jurisdiction under Article 227 of Constitution of India in favour of the plaintiffs. Both the Courts below have, upon appreciation of the materials on record, exercised their discretion against the plaintiffs, which cannot be said to be perverse. Hence, writ petition stands dismissed.