

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

APPEAL FROM ORDER NO.636/2014
WITH
CIVIL APPLICATION NO.764/2014

Mansooralli Jummabhai Pirani & Anr. ... Appellants

Vs.

Mr. Gulamhussain Mulla Abdulhussain Lilyawala ... Respondents

Mr. R. A. Thorat, Senior Advocate i/b. P. J. Thorat for the Appellants
Mr. Navin Parekh i/b. Hetal Patel for the Respondent.

CORAM : K. K. TATED, J.

DATE : JULY 7, 2015

PC.:

1. Heard. This appeal is preferred by the Plaintiff challenging the order dated 03/05/2014 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.997/2009 declining to grant interim relief in favour of the Plaintiff restraining the Respondent from disturbing their peaceful possession of the suit premises i.e. Flat No.8-B situated at Sy.No.51 H.No.2(part), Sy.No.52 Sy.No.1(part) CTS No.912, Udyog Nagar, Shilay Industries, S. V. Road, Goregaon, Mumbai – 400062.

2. The learned senior counsel for the Plaintiff submits that, by deed of conveyance dated 28/12/2006 the Plaintiff is in possession of the suit property. He submits that since the Defendant started obstructing their peaceful possession of the suit premises as stated in paragraph 12

and 13 of the plaint, they preferred the present proceedings. He further submits that as per the deed of conveyance dated 28/12/2006 the Plaintiff is in possession of the suit land. The learned counsel for the Plaintiff submits that it is specifically stated in the conveyance deed that the Defendant handed over peaceful possession of the land as well as the structures. In support of this contention, he relies on the following portion of the conveyance deed:

“AND WHEREAS, the Vendor as well as the Purchasers hereto negotiated and settled the terms for sell, transfer and convey the right, title and interest of ownership in respect of the said sheds/structures standing upon the land bearing Plot No.8B for the total consideration price of Rs.35,00,000/- (Rupees thirty five lakhs only) and the Vendor further agreed to lease out the said Plot of land bearing Plot No.8B for 99 (Ninety Nine) years of lease with condition of renewable at the option of the lessees namely the purchasers heren.

AND WHEREAS, wherever the terms under the present Deed is referred to as the Vendor and Purchasers the same is pertaining to the Deed of Conveyance whereby the right, title and interest of ownership in respect of the said Sheds/Structures situated upon the Plot 8B is concerned and in respect of the lease of the said Plot bearing 8B the Vendor shall be construed as the Lessor and Purchasers as the Lessees and it is therefore, made clear that the present Deed of Conveyance is in respect of the said Sheds/Structures situated upon Plot No.8B on the basis of as it is where it is as well as the present indenture is the Deed of Lease in respect of the Plot of Land bearing 8B for 99 (Ninety Nine) years.”

3. The learned Senior Counsel further submits that even the Defendant filed T.E.& R. suit No.108/2012 in the Small Causes Court at Bombay for vacant and peaceful possession of the suit premises on the ground that the lease deed is terminated by them. He submits that

in the interest of justice, this Hon'ble Court be pleased to restrain the Respondent Defendant from disturbing their peaceful possession over the suit premises during pendency of the present litigation.

4. On the other hand, the learned counsel for the Respondent Defendant vehemently opposed the Appeal from Order. He submits that the Plaintiff, under the guise of the prayers made in the Notice of Motion, wants to carry out illegal construction in the suit premises which is contrary to the terms of the alleged deed of conveyance dated 28/12/2006. He further submits that the Defendant, on several occasions, called upon the Plaintiff to provide a copy of permission, if any, obtained by them from the Corporation for carrying out construction in the suit premises. He further submits that there is no question of granting any relief in this Appeal from Order because the Defendant already filed TE&R Suit No.108/2012 in the Court of Small Causes at Bombay for vacant and peaceful possession of the suit premises. On the basis of this submission, the learned counsel for the Defendant submits that there is no substance in the present appeal and same be dismissed with costs.

5. Heard both sides at length. It is to be noted that in the present proceedings, the Plaintiff filed S.C.Suit No.1503/2009 for an order of injunction restraining the Defendant from disturbing their possession in the suit premises. Prayer clauses (a) and (b) of the plaint reads thus:

“(a) This Hon'ble Court be pleased to issue an order of injunction restraining the Defendant, his servants, agents, employees and/or persons claiming on behalf of the Defendant, from entering, obstructing and/or taking forceful possession of the suit premises being Plot No.8B, situate at Survey No.51, Hissa No.2 (Part),

Survey No.52, Hissa No.1 (Part) CTS No.912, Udyog Nagar, Shilay Industries, S.V.Road, Goregaon (W), Mumbai – 400 062 from the Plaintiffs and be further restrained from entering upon the or remaining in the suit premises and/or coming in the suit premises and/or threatening any of the employees, workers of the Film Unit working in the premises or in any manner obstructing the Plaintiffs peaceful, use occupation and possession of the suit premises.”

“(b) Pending hearing and final disposal of the suit this Hon'ble Court be pleased to issue an order of injunction restraining the Defendant, his servants, agents, employees and/or persons claiming on behalf of the Defendant, from entering, obstructing and/or taking forceful possession of the suit premises being Plot No.8B, situate at Survey No.51, Hissa No.2 (Part), Survey No.52, Hissa No.1 (Part) CTS No.912, Udyog Nagar, Shilay Industries, S.V.Road, Goregaon (W), Mumbai – 400 062 from the Plaintiffs and be further restrained from entering upon the or remaining in the suit premises and/or coming in the suit premises and/or threatening any of the employees, workers of the Film Unit working in the premises or in any manner obstructing the Plaintiffs peaceful, use occupation and possession of the suit premises.”

6. Bare reading of the deed of conveyance dated 28/12/2006 shows that the Plaintiff is in possession of the structure as well as the suit land. Though the Defendant filed suit in the court of Small Causes for vacant and peaceful possession, the Plaintiff got apprehension that the Defendant may disturb their possession. Hence, considering the fact that the Plaintiff is in possession of the suit premises for last several years, I am of the opinion that the Plaintiff is entitled to the order of injunction restraining the Defendant from disturbing their possession from the suit premises. These facts are not considered by the Trial Court. The Trial Court has held that the Plaintiff failed to prove their possession over the land on the basis of deed of conveyance dated 28/02/2006 which is contrary to the facts and documents on record.

7. Considering the submissions made by the learned counsel for the Appellant and the above mentioned facts following order is passed:

a. The impugned order dated 03/05/2014 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.997/2009 in S.C.Suit No.1503/2009 is set aside.

b. The Respondent Defendant is restrained by an order of injunction from disturbing the Plaintiff's peaceful possession and enjoyment over the suit premises as described in the plaint, without following due process of law.

c. The Court of Small Causes, Bombay to decide TE&R Suit No.108/2012 on its own merits, without being influenced by the present order.

d. Appeal from Order stands disposed of accordingly.

e. Consequently, the Civil Application stands dismissed as infructuous.

(K.K.TATED,J.)