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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.916 OF 2015
IN
NOTICE OF MOTION NO.2055 OF 2014
IN
L.C. SUIT NO.1766 OF 2014

WITH
CIVIL APPLICATION NO.1116 OF 2015
IN
APPEAL FROM ORDER NO.916 OF 2015
IN
NOTICE OF MOTION NO.2055 OF 2014
IN
L.C. SUIT NO.1766 OF 2014

Smt.Sunetra C. Senjit	...Appellant
V/s.	
Smt.Pooja N. Senjit & Ors.	...Respondents

Mr.Sanjeev Singh for the Appellant.

Mr.Samir Vaidya for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 23RD NOVEMBER, 2015.

P.C. :-

1. By this appeal from order the appellant (original plaintiff) has impugned the order dated 18th June, 2015 passed by the learned trial Judge on the notice of motion filed by the respondent no.1 directing the defendant nos.5 and 6 for payment of arrears of rent to the defendant no.1 from 1st September, 2014 till date and to continue

the same as per the agreement dated 26th August, 2013 and also to hand over newly constructed flat to the defendant no.1 in terms of the agreement dated 26th August, 2013.

2. It was the case of the appellant (original plaintiff) that she was entitled to 20% share in the suit flat being one of the legal heir of Chandrasen Senjit i.e. the deceased husband of the appellant, who was the owner of the flat no.12 admeasuring 600 sq. ft. carpet area on SBI Staff Shree Society. The said Chandrasen Senjit expired on 11th September, 2009 leaving behind him the plaintiff, the respondent nos.2 to 4 and late Shri Nimish Senjit as his only legal heirs and legal representatives.

3. Insofar as the respondent no.1 is concerned, she claimed rights being widow of the said Mr.Nimish Senjit, who had claimed rights in the said flat as a nominee of his father. It appears that the husband of the appellant had nominated his son Nimish Senjit insofar as the said flat is concerned in the record of the society. On the basis of such nomination form, the said flat upon the demise of the husband of the appellant was transferred in the name of Nimish Senjit, husband of the respondent no.1 in the year 2010. Upon demise of the husband of the respondent no.1, the respondent no.1 now claims rights in the said flat.

4. The question as to whether the husband of the respondent

no.1 could claim any rights in the suit flat on the basis of nomination form alleged to have been signed by the husband of the appellant or not would be the issue which can be decided by the learned trial Court. It appears that the said building in which the suit flat was situated was under redevelopment. In the notice of motion filed by the respondent no.1 before the trial Court, the trial Court has not only directed the developer to pay all the arrears of rent to the respondent no.1 herein but has also directed to hand over newly constructed flat to the respondent no.1 in terms of the agreement dated 26th August, 2013. At the same time the respondent no.1 is also directed not to create any third party rights in the said new flat till the decision in the main suit.

5. When this appeal from order appeared on board on 7th July, 2015, learned counsel for the respondent no.1 made a statement that till the date of the said order, the flat was not ready for occupation. The statement was accepted by the Court and accordingly no ad-interim reliefs was granted at that time.

6. Learned counsel for the respondent no.1 today states that on 14th July, 2014 the developer has handed over various payments to the respondent no.1 and has also handed over possession to the respondent no.1 for furniture purposes. Learned counsel for the respondent no.1 on instructions states that the Municipal Corporation

has not granted the occupation certificate in respondent the said building and/or the flat in question so far.

7. In my *prima-facie* view, the rights of the appellant was common with other legal heirs of husband of the appellant. In my *prima-facie* view, the husband of the respondent no.1 could not claim any ownership on the basis of the nomination form.

8. In my view the interest of justice would be met with if the respondent no.1, who has recovered the entire amount from the developer in respect of the suit flat is directed to deposit 1/5th share out of such deposit in this Court within two weeks from today. The appellant is permitted to withdraw the said amount upon furnishing an undertaking to this Court to the effect that if the appellant fails in the trial court proceedings, the same shall be returned as may be directed by the learned trial Judge.

9. Since the Municipal Corporation has not issued any occupation certificate in respect of the suit premises, the respondent no.1 cannot be allowed to occupy the said premises in absence of any such occupation certificate. If any occupation certificate is granted by the Municipal Corporation, the respondent no.1 would be at liberty to seek appropriate relief before the learned trial Court for possession of the said flat. If any such proceedings are filed, the learned trial Judge shall consider the said proceedings on its own

merits after hearing the rival contentions of both the parties. It is made clear that during the pendency of the trial court proceedings, the plaintiff as well as the defendants shall not create any third party rights in respect of the said flat.

10. The defendants are directed to file the written statement within four weeks from today and shall serve a copy thereof upon the plaintiff's advocate simultaneously. If the pleadings are complete before the learned trial Court, the matter may be placed for directions for issuing further directions and for proceeding with the trial by the learned trial Judge expeditiously.

11. Hearing of the suit is expedited.

12. The appeal from order is accordingly disposed of in aforesaid terms.

13. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)