

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.976 OF 2015
IN
NOTICE OF MOTION NO.930 OF 2013
IN
S.C. SUIT NO.978 OF 2013

WITH
CIVIL APPLICATION NO.1195 OF 2015
IN
APPEAL FROM ORDER NO.976 OF 2015
IN
NOTICE OF MOTION NO.930 OF 2013
IN
S.C. SUIT NO.978 OF 2013

Ramesh S. Devkule	...Appellant
V/s.	
Smt.Shalan S. Devkule & Ors.	...Respondents

Mr.Deepak Lulia for the Appellant.

None for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 16TH NOVEMBER, 2015.

P.C. :-

1. By this appeal the original plaintiff seeks to impugn the order passed by the learned trial Judge dismissing the notice of motion by which the appellant had prayed for injunction restraining the original defendant no.1, her servants, agents and persons claiming through her from preventing and/or obstructing the entry of

the plaintiff in the suit premises, from transferring, assigning, creating any third party right or inducting any third party in the suit premises.

2. Learned counsel for the appellant (original plaintiff) states that the suit premises originally belonged to the father of the plaintiff, who was the husband of the first defendant and upon demise of father, the appellant being one of the son, is entitled to inherit the tenancy rights in the suit premises. He submits that the landlord ought not to have transferred the tenancy rights in favour of the defendant no.1. He submits that learned trial Judge ought to have thus granted an injunction in respect of further transfer of the said tenancy against the defendant no.1. It is submitted that the appellant has not admitted the alleged execution of the power of attorney by the father of the appellant in favour of the defendant no.1. Learned counsel placed reliance on the judgment of the Allahabad High Court in case of **Budh Sen vs. Sheel Chandra Agarwal & Ors., AIR 1978 Allahabad, 88** in support of his submission that the tenancy rights are heritable and devolve upon all the heirs of the deceased irrespective of the question as to whether some of them are in occupation of the demised premises or not.

3. The father of the appellant, who was the husband of the original defendant no.1 had already executed a special power of attorney in favour of the original defendant no.1. The father of the

appellant expired on 30th June, 2008. After the demise of the father of the appellant, the original defendant no.1 has been in exclusive use, occupation and possession of the suit premises. It is not in dispute that even according to the appellant, he had left the premises as far back as in the year 2003 and has been staying separately.

4. The landlords, who are parties to this proceedings also had filed the written statement before the learned trial Judge stating that they have already transferred the tenancy rights in respect of the suit premises in favour of the original defendant no.1 on the basis of the rules framed in respect of BDD chawl since she was staying in the premises at the time of death of her husband.

5. In my view, the learned trial Judge has rightly considered the statement made by the landlords before the learned trial Judge that the premises was already transferred in favour of the respondent no.1 for the reasons recorded therein. The appellant has been admittedly staying separately since 2003 even according to the appellant. The learned trial Judge, in my view, has rendered sufficient reasons for rejecting the notice of motion which do not require any interference.

6. Insofar as the judgment of the Allahabad High Court in case of **Budh Sen vs. Sheel Chandra Agarwal & Ors.** (supra) relied upon by the appellant is concerned, in my view the said

judgment does not assist the appellant. The appeal is devoid of merits and is accordingly dismissed. No order as to costs.

7. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)