

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1115 OF 2015
ALONGWITH
CIVIL APPLICATION (ST) NO.19932 OF 2015
IN
APPEAL FROM ORDER NO.19929 OF 2015

Mr. Taherali Muzaffar Husain
Mandasurwala

.. Appellant

Vs.

Mr. Rasiklal Shyamji Madhwani & Ors.

... Respondents

Prashant G Pandey, Adv. for appellant.

Idris Mohammedali Vohra, Adv. a/w. Vinay Khandelwal, Adv. for
respondent Nos.1 to 5.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 15th September, 2015.

P.C. :

1. Rule. Returnable forthwith.

2. The appellant claims to have been dispossessed from the suit premises forcibly. The suit which is filed by the appellant is under Section 6 of the Specific Relief Act. The appellant must first show his possession. The possession must be juridical and lawful. The appellant must then show that the possession was taken over forcibly. To show the first aspect the appellant claims that he acted on behalf of the four persons for whom he had to find premises under certain Power of Attorney. The POA is to buy / purchase the premises on behalf of the principals and to execute documents in that behalf. The POA is not registered. It is notarised.

3. Under the POA the plaintiff claims to have entered into an Memorandum of Understanding on behalf of his principals. The plaintiff claims to have purchased the property of the defendants for his principals. The initial transaction is under MOU dated 9th April, 2003. The MOU makes mention of all the owners being in possession of premises i.e. Park Art Jewels at certain address. The plaintiff claims to have paid Rs.11 lacs out of the total consideration of Rs.77 lacs. The MOU is unregistered and insufficiently stamped and shown to be notarised. The stamp is shown to be purchased by some entirely different party.

4. Soon thereafter on 21st June, 2003 a sale agreement is executed. This is what the plaintiff / appellant would call the sale deed. The sale deed is also unregistered and insufficiently stamped. The stamp paper is purchased by another party. It is shown to be notarised. It also shows the name of Park Art Jewels at the same address. The consideration received is shown to be not Rs.77 lacs but Rs.37.88 lacs from the plaintiff by the defendants. The said amount is not paid by cheque.

5. An affidavit of defendant No.2 is shown to be made on another stamp paper purchased in the name of the plaintiff stating about the sale of the property.

6. The plaintiff claims to be having the original documents with himself. The original documents are neither relied upon nor produced even before this Court. Colour photocopies are produced to pass them as original documents which can not be countenanced.

7. Consequent upon the sale the plaintiff claims to be in possession. The possession is sought to be shown by a letter showing an inspection extract sent by the MMC to the plaintiff upon the letter of the plaintiff dated 5th July, 2003. The extract is issued on 14th July, 2003. There are three such letters. It is seen that this is in a bid to procure evidence. The letters show nothing except the inspection extract of the property upon the plaintiff's letter.

8. The plaintiff has sought to rely upon what he calls a certificate under Shops and Establishment Act. There is no such certificate produced. An application made under Section 7(2A) of the Bombay Shops and Establishment Act is only produced. It shows the name of the plaintiff which would pass as the certificate, but which does not. The actual certificate of registration under the Shops and Establishment Act is issued for the first time in 2007 in the name of Hutaib Jewellers, showing Mulla Asgarali Kapadia as employer. Mulla Asgarali Kapadia is one of the principals of the plaintiff for whom the plaintiff sought to entered into the MOU under the POA executed by the said Mulla Asgarali Kapadia in favour of the plaintiff. Similarly certain inspection report is in the name of that person.

9. Two chits are shown also in the name of that person which are stated to be for the payment of property tax. The chits do not show any amount and no receipt of payment of any tax is shown. The chits are seen to be for a completely different purpose sought to be relied upon to claim the payment of property tax.

10. What the plaintiff calls another certificate / license is again the inspection report in the names of all the three persons who are the

principals of the plaintiff other than the aforesaid Mulla Asgarali Kapadia.

11. The plaintiff has surprisingly relied upon a private document being a certificate issued by the Immitation Jewellery Dealers & Manufacturers Association as late as on 8th April, 2015 certifying that the plaintiff as also the aforesaid Hutaib Jewellers and Park Art Jewels have been in possession. It is wondrous how any private party can issue certificate of possession.

12. The plaintiff has produced one copy of the MTNL bill in the name of Mulla Asgarali Kapadia at the address mentioned in the MOU to claim that that party was in possession.

13. The case of the plaintiff in the plaint in paragraph 14(w) is that from 2003 to 2009 one Shri Balaji Jewellery and alter Hutain Jewellers were in possession and thereafter from 2009 to 30th March, 2015 one Pukhaj M Parmar was in possession. Pukhaj Parmar is stated to be the owner of Parmar Jewellers. The plaintiff has produced the registration certificate under the Shops and Establishment Act in the name of Perk Art Jewels showing Pukharaj M Parmar to be employer which is issued only late as in 2013.

14. The plaintiff claims that he entered into the license with Parmar in 2009 and hence Parmar came into possession. The agreement of license of 2009 is not produced. The agreement of license of 9th October, 2012 is produced based upon which the certificate came to be issued in 2013 and which is directly contrary to the plaintiff's case of Perk Art Jewels being shown as the landlord,

owner and occupant in the MOU and the sale deed of 2003.

15. Consequently it is argued on behalf of the defendant / respondent herein that the entire MOU and the sale deed which are unregistered are got up documents under the stamp paper purchased by some other party showing Perk Art Jewels in the documents where as Pukharaj Parmar the employer of the Perk Art Jewles has come into suit premises in 2009 and whose registration certificate is only from 2013.

16. Indeed such is the unregistered and insufficiently stamped document on which the plaintiff rests his claim.

16. Upon such evidence no case of possession is made out either by the plaintiff or his principals. The principals have not sued. The plaintiff has sued. The plaintiff purchased the suit property not for himself but for the principals. The plaintiff has not shown the payment of the consideration made since Rs.37 lacs is shown to be paid not by cheque and must be taken to have the cash payment. The entire payment of Rs.77 lacs is not even shown to be made.

17. Under these circumstances the plaintiff claims to be forcibly dispossessed. The plaintiff claims that he filed a criminal complaint. The police locked the premises and handed over key to the defendants. From whom the police took the key is not shown.

18. The defendants have produced the assessment bills, the property registered card as also electricity bills in their names. These are documents to evidence continuation of ownership of the

defendants.

19. The plaintiff having not shown lawful possession cannot be granted any ad interim relief. The impugned order has refused ad interim relief. The order is correct. The application of the plaintiff for any relief in the appeal has to be rejected.

20. The Appeal from Order itself is rejected. Civil Applications are disposed of accordingly.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.