

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

CIVIL APPLICATION NO.1431/2014
IN
SECOND APPEAL NO.597/2014

Grasian Robert Louise ... Applicant

Vs.

Smt. Molly Lobo & Ors. ... Respondents

Mr. Ruturaj Pawar i/b. S. S. Patwardhan for the Applicant
Mr. A. H. Palekar for the Respondent No.1.

CORAM : K. K. TATED, J.
DATE : OCTOBER 8, 2015

PC.:

1. Heard. None for the other Respondents, though duly served.
2. This Application is made by Defendant No.3 for stay of the operation and implementation of the impugned judgment and decree dated 10/03/2014 passed by the Appellate Court in civil appeal No.194/2012, which reads thus :

- “1. The appeal is partly allowed.
2. The suit of the Plaintiff is partly decreed.
3. It is declared that the sale deed in between the Defendant No.1 and Defendant No.3 dated 21/09/2001 in respect of land bearing Gut No.33 H.No.7+8B as illegal and not binding on the Plaintiff.
4. The Defendant No.1 is hereby directed to execute the sale

deed in favour of the Plaintiff within three months in respect of land bearing No.33 H.No.7+8B and Defendant No.3 is further directed to join in that sale deed and both are directed to co-operate for registration of sale deed.

5. Defendant No.3 is directed to hand over possession of this land to the Plaintiff.

6. The Plaintiff is directed to pay Rs.29,000/- to the Defendant No.1 at the time of transfer of the suit land on 7/12 extract in her name after execution of the registration of sale deed.

7. The Defendant No.1 is directed to pay Rs.50,000/- towards compensation to the Plaintiff.

8. The part of the decree pertaining to refund of Rs.91,500/- by Defendant No.1 to Plaintiff is set aside.

9. The Plaintiff is at liberty to execute the decree as per law.

10. The prayer of the Plaintiff for refund of Rs.1,50,000/- is rejected.

11. Decree be drawn accordingly.”

3. The learned counsel for the Applicant submits that they are in possession of the suit property i.e. Sy.No.29, 33 and 84 situated at village Dundare, Tq. Panvel, Dist. Raigad. He further submits that both the courts below held that Defendant No.3 was in possession of the suit property. Hence, pending the hearing and final disposal of the appeal, this Hon'ble Court be pleased to stay the operation and implementation of the impugned decree dated 10/03/2014. He submits that if stay is not granted the Respondent Plaintiff may take possession through executing court and in that case nothing will survive in the present

proceedings. He submits that the Applicant has good chance of success in the matter.

4. On the other hand, the learned counsel for the Plaintiff vehemently opposed the Civil Application. The Respondent No.1 Plaintiff filed affidavit dated 05/10/2015. He submits that the Plaintiff challenged the judgment and decree dated 22/08/2007 passed by the Trial Court in Special Civil Suit No.36/2003 by preferring the First Appeal No.2286/2007 in this court. In that First Appeal the Plaintiff had made Civil Application No.4924/2007 for an order of injunction restraining the Defendant from disturbing her possession in respect of the suit property. He submits that the Civil Application was decided by this court (Coram : R.M.S. Khandeparkar, J.) on 01/08/2008 after hearing both sides. He submits that this Hon'ble Court held that the Plaintiff was in possession of the suit property and same to be continued till hearing and final disposal of the appeal.

5. The learned counsel for the Plaintiff submits that being aggrieved by the order dated 01/08/2008 passed by this court the Defendant No.3 had preferred SLP (Civil) NO.3948/2009 which was disposed off by the Apex Court on 21/01/2011 holding that the possession of the Plaintiff to be protected, in following terms :

“This is a petition for setting aside order dated August 1, 2008 passed by the learned Single Judge of the Bombay High Court, who disposed of Civil Application No.4924/2007 filed by Respondent No.1 in First Appeal No.2286/2007 and confirmed ad-interim order dated 03/10/2007.

We have heard learned counsel for the parties and carefully perused the record. In our view, the discretion exercised by the learned Single Judge to confirm the interim order whereby possession of Respondent No.1 has been protected does not suffer from any legal error warranting interference under Article 136 of the of the Constitution.

The special leave petition is accordingly dismissed.”

6. The learned counsel for the Plaintiff submits that it is crystal clear from the order passed by this court dated 01/08/2008 and the order dated 24/01/2011 passed by the Apex Court that the Plaintiff was and is in possession of the suit property. Hence, there is no question of staying the impugned decree passed by the Appellate Court. Therefore, there is no substance in the Civil Application. Same be dismissed with costs.

7. Heard both sides at length. It is to be noted that in the present proceedings the Appellate Court, by impugned decree dated 10/03/2014 directed the Defendant No.1 to execute the sale deed in favour of the Plaintiff in respect of the suit land bearing Gut No.33 H7 + 8B situated at village Dundare, Tq. Panvel, Dist. Raigad.

8. Considering the facts and circumstances of the case, I am of the opinion that the Defendant No.3 has made out a case to stay the operation and implementation of clause 4 of decree dated 10/03/2014 till hearing and final disposal of the Second Appeal. Clause 4, reads thus:

“4. The Defendant No.1 is hereby directed to execute the sale deed in favour of the Plaintiff within three months in respect of land baring gut No.33 H.No.7+8B and Defendant No.3 is further

directed to join in that sale deed and both are directed to co-operate for registration of sale deed.”

9. In respect of the possession of the suit property, it is to noted that this court, by order dated 01/08/2008 and the Apex Court by order dated 24/01/2011 specifically held that the Plaintiff was and is in possession of the suit property therefore, there is no question of staying clause 5 of the impugned decree till hearing and final disposal of the Second Appeal. At the same time, in the interest of justice, the Plaintiff is required to be restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property till hearing and final disposal of the Second Appeal.

10. Hence, following order is passed:

- a. Civil Application is partly allowed.
- b. Clause 4 of the impugned decree dated 10/03/2014 passed by the Principal District Judge, Raigad in civil appeal No.194/2012 is stayed. Clause 4, reads thus:

“4. The Defendant No.1 is hereby directed to execute the sale deed in favour of the Plaintiff within three months in respect of land baring gut No.33 H.No.7+8B and Defendant No.3 is further directed to join in that sale deed and both are directed to co-operate for registration of sale deed.”

- c. Respondent No.1- Plaintiff is restrained by an order of injunction from selling the suit property till hearing and final disposal of the Second Appeal.
- d. Civil Application stands disposed off accordingly.

11. At this stage, the learned counsel for the Applicant seeks continuation of the earlier order passed by this court on 10/11/2014

i.e. directing both the parties to maintain status-quo.

12. Considering the submission made by the learned counsel for the Applicant and the order passed by the Apex Court, I do not find any reason to grant status-quo. Hence, oral requested stands rejected.

JUDGE