

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST) NO. 34076 OF 2015****ALONGWITH****CIVIL APPLICATION (ST) NO.34078 OF 2015****IN****APPEAL FROM ORDER (ST) NO. 34076 OF 2015****Sunil Tukaram Veer****..... Appellant****VERSUS****Atmaram Tukaram Veer & Ors.****..... Respondents**

Mr.Milind Desai, a/w. Mr.Pankaj Parsuramani, Mr.S.V.Thorat, i/b.Ms.Ashwini Desai for the Appellant.

Mr.Paresh Madkaikar, i/b. Mr.S.S.Redekar for Respondent No.1.

Mr.Prashant G.Karande for Respondent No.3.

Mr.V.S.Kapse for Respondent No.4.

Mr.Chetan Mhatre, i/b. M/s.Utangale & Co. for the Respondent No.5 MHADA.

**CORAM : R.D. DHANUKA, J.****DATED : 17<sup>th</sup> DECEMBER, 2015****P.C.**

By this appeal from order, the appellant has impugned the order passed by the learned trial judge dismissing the notice of motion filed by the appellant (original plaintiff) against the respondents. The appellant claims to be in possession of the transit accommodation allotted by MHADA in lieu of the suit property in respect of which there are rival claims made by the plaintiff and defendant no.1. It is the case of the plaintiff that the plaintiff has been exclusively occupying the transit camp and the tenancy has been fraudulently transferred in the name of the defendant no.1. It is the case of the defendant no.1 that the tenancy

was transferred in the name of the defendant no.1 legally as far back as in the year 1975 and defendant no.1 had handed over possession of the suit property to the MHADA.

2. In view of the rival claims made by the plaintiff and defendant no.1 who are real brothers, it would be appropriate if the developer is directed to hand over possession of the permanent alternate accommodation of the suit property to the Court Receiver as and when the same is ready. The agreement for permanent alternate accommodation also can be executed for the time being with the Court Receiver in respect of the suit property which shall be subject of the final outcome of the S.C.Suit No.967 of 2014.

3. Learned counsel appearing for the developer states that the occupation certificate is expected to be received within two weeks from today. It is made clear that as soon as the occupation certificate is received, the developer shall convey about receipt of the occupation certificate to the plaintiff as well as defendant no.1. The plaintiff is directed to handover vacant possession of the transit accommodation provided by the developer in lieu of the suit premises to the developer within two weeks from the date of communication about such occupation certificate. It is made clear that if the plaintiff or any person found in occupation of the transit accommodation does not handover possession thereof to the developer within two weeks from the date of receipt of such communication, the developer would be at liberty to take possession of the said transit camp and if necessary with the assistance of police.

4. It is made clear that this court has not expressed any views on the merits of the matter.

5. Insofar as rights of the plaintiff and defendant no.1 is concerned and as to who would be entitled to act as an agent of the court receiver is concerned, both parties are at liberty to file appropriate proceedings before the learned trial judge. Learned trial judge shall consider the said reliefs in accordance with law and on its own merits. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of appeal from order, civil application does not survive and is accordingly disposed of.

**[R.D. DHANUKA, J.]**