

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

CIVIL APPLICATION NO.284/2014
IN
APPEAL FROM ORDER NO.242/2014

Mrs. Soma Baidyanath Laha	... Applicant
Vs.	
Mrs. Pooja Ravi Arora	... Respondent

Mr. S. S. Kanetkar for the Applicant
Mr. Shivraj R. Singh for the Respondent.

CORAM : K. K. TATED, J.
DATE : JULY 2, 2015

PC.:

1. Heard. This appeal is preferred by the Plaintiff challenging the order dated 30/10/2013 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.1725/2013 in S.C.Suit No.1949/2013 declining to grant ad-interim relief in favour of the Plaintiff.

2. It is the case of the Plaintiff that he agreed to purchase the suit shop No.A/2 admeasuring 116 sq.ft. situated at ground floor, Midas Enclave, Dadi Sheth Road, Off. S. V. Road, Malad (West), Mumbai-400064 from Respondent Defendant by registered agreement for sale dated 08/03/2013 for Rs.18,85,000/-. The Plaintiff paid Rs.10,85,000/- to the Defendant. Thereafter the Plaintiff filed S.C.Suit No.1949/2013 in Bombay City Civil Court, Mumbai for an order of injunction restraining the Respondent Defendant from disturbing the Plaintiff's peaceful possession over the suit shop without following due

process of law and also allow the Plaintiff to deposit balance consideration of Rs.8,50,000/- in court towards agreement for sale. In that proceeding, the Plaintiff preferred Notice of Motion No.1725/2013 which was dismissed by the Trial Court. Hence, the present Appeal from Order.

3. The learned counsel for the Plaintiff submits that the Plaintiff is in possession of the suit premises. He further submits that the Defendant executed agreement for sale dated 08/3/2013. Out of consideration of Rs.18,85,000/- they paid Rs.10,85,000/- to the Defendant. He submits that subsequently, the Defendant filed L.E.Suit No.82/115/2013 in Small Causes Court at Bombay for directions to the Plaintiff and other Defendants to hand over vacant and peaceful possession of the suit premises. Prayer clause (a) of the said suit reads thus:

“(a) That the Defendant Nos.1 and 2 be ordered and decreed to quit, vacate and handover quite, vacant and peaceful possession of suit premises i.e. Shop No.A/2, admeasuring 116 sq.ft. situated at Ground Floor, Midas Enclave Building, Dadi Sethi Road, Off. S.V.Road, Malad (W), Mumbai – 400064, to the Plaintiff.”

4. The learned counsel for the Plaintiff submits that before the Small Causes Court, the Defendant preferred Application below Exhibit -14 seeking directions against Defendant No.1 in that suit to pay arrears of monthly compensation and to deposit the damages, which was decided by the Small Causes Court by order dated 19/11/2014 holding that Defendant No.2 in that suit i.e. the Plaintiff in the present

suit is in possession of the suit premises. He relies on paragraph 8 of the order dated 19/11/2014 which reads thus:

“8. More so, as per the pleadings of the Plaintiff in the plaint, the Defendant No.2 is in illegal possession of the suit premises. Therefore, it cannot be said that, the Defendant No.1 is in possession of the suit premises. When the Defendant No.2 is in possession of the suit premises, then the Defendant No.1 cannot be directed to pay compensation of damages for use and occupation of the suit premises. Therefore, in view of the above discussion when the leave and license agreement appears to be terminated on 07/03/2013, then the question of directing the Defendant No.1 to pay damages does not arise. So, I found no substance in the Application. Hence, pass the following order:

ORDER

The Application is rejected.”

5. The learned counsel for the Appellant submits that, the Defendant, in his suit before the Small Causes Court, has admitted that the Appellant/Plaintiff is in possession of the suit premises. He further submits that if the Defendant dispossess the Plaintiff without following due process of law, irreparable loss and injury will be caused to him. Hence, pending the hearing and final disposal of the Appeal from Order, this Hon'ble Court be pleased to restrain the Defendant from disturbing the Plaintiff's possession over the suit premises without following due process of law.

6. On the other hand, the learned counsel for the Defendant vehemently opposed the present Civil Application. They filed Affidavit-in-Reply dated 23/08/2014. The learned counsel for the Defendant

submits that the Plaintiff - Applicant is not in possession of the suit premises at all. He submits that, in fact, the suit premises was given on leave and license basis to Krishna Rito Singh and even as on today, he is in possession. He further submits that the Defendant was in need of some money. Hence, he requested the Plaintiff to lend some amount for temporary period. In that transaction, the agreement for sale dated 08/03/2013 was executed. He further submits that in Small Causes Court suit, the Bailiff report shows that the Defendant No.1 in that suit i.e. Krishna Rito Singh was in possession of the suit premises. Hence, the Plaintiff is not entitled to any relief from this court and Civil Application be dismissed with costs.

7. Heard both sides at length. In the present proceedings, it is to be noted that the Defendant filed L.E.suit No.82/115/2013 in the court of Small Causes at Bandra against Krishna Rito Singh and the Plaintiff, wherein the Defendant prayed for decree of eviction against the Plaintiff also. This itself shows that the Plaintiff is in possession of the suit premises. Therefore, whatever stated by the bailiff in the service report and/or other documents cannot be considered at this stage. When the Defendant, in a pleading before the Small Causes Court admitted that the Plaintiff is in possession of the suit premises, same required to be protected till hearing and final disposal of the present Appeal from Order. Hence, the following order:

A. Civil Application is made absolute in terms of prayer clause (a) which reads thus:

“(a) Pending hearing and final disposal of the Appeal from Order, the Respondent, his agents, servants,

representatives or anybody claiming through him be restrained by an order of injunction from dispossessing the Applicant and/or taking forcible possession of the Applicant and/or disturbing the peaceful possession of the Applicant in the suit premises, viz. Shop No.2 situated on the ground floor, "A" Wing in the building known as Midas Enclave, Dadi Sheth Road, Off S.V.Road, Malad (West), Mumbai, without following due process of law."

B. The Plaintiff is 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 Appeal from Order.

C. Civil Application stands disposed off accordingly.

(K.K.TATED, J.)