

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1424 OF 2014
IN
SUIT NO. 773 OF 2014

Mr. Moosabhai Ahmed Maniyar ... Applicant / Plaintiff

Versus

Mrs. Aiysha Yusuf Laher and Ors. ... Defendants

Mr. V. Tikare a/w. Ms. Fatema Rampurwala for the Applicant / Plaintiff.
Dr.V.V. Tulzapurkar, Senior Advocate, along with Mr. Mandar Soman i/b. D.D.
Rai for Defendant Nos. 3 and 4.
Mr. P.G. Lad, AGP, for Defendant No. 5.

CORAM : S.J. KATHAWALLA, J.
DATED : 7TH SEPTEMBER, 2015

P.C.

1. The Plaintiff in the above Suit has claimed that he is the lawful owner of the piece of land containing an area of 513.38 Square Meters (i.e.614 Square Yards) or thereabouts being Plot No. 143 of Suparibaug Estate bearing new Survey No. 2578, bearing Cadastral Survey No. 84 / 74 of Parel – Sewri Division, (the Suit plot) with a building standing thereon called 'Taqdir Terrace' (the Suit building). The said plot along with the building 'Taqdir Terrace' shall be hereinafter referred to as the 'Suit property'.

2. According to the Plaintiff, by and under an Agreement dated 10th December, 2003 he and his father had purchased the Suit property from Defendant Nos. 1 and 2. According to the Plaintiff, Defendant No. 3 has made a

dishonest claim of being the owner of the Suit property under the Deed of Assignment dated 4th July, 2011 and that Defendant Nos. 3 and 4 have further made a dishonest claim that Defendant No.3 has purportedly sold the Suit property to Defendant No. 4 under the Deed of Assignment dated 16th October, 2012. The Plaintiff has therefore filed the present Suit inter alia seeking declarations that he is the lawful owner of the Suit property and that the Agreement dated 10th December, 2003 executed by the Defendant Nos.1 and 2 on the one hand and the Plaintiff and his father (now deceased) on the other, is valid subsisting and binding on Defendant Nos. 1 and 2 and that the Deeds of Assignment dated 4th July, 2011 and 16th October, 2012 relied on by the Defendant Nos.3 and 4 respectively are sham, bogus, null and void.

3. The Plaintiff has also taken out the above Notice of Motion in the Suit inter alia seeking orders and injunctions restraining Defendant Nos. 3 and 4 from acting upon the Deeds of Assignment dated 4th July, 2011 and 16th October, 2012 and to restrain the Defendant Nos. 3 and 4 from interfering with the lawful possession of the Plaintiff of the Suit property in any manner whatsoever. The Plaintiff has also sought to restrain the Defendant Nos. 3 and 4 from entering into any Agreement as well as obtaining irrevocable consent from the tenants of the Suit building with the intent to redevelop the Suit building and also to stay the proceedings before the Defendant No. 5 - Collector of Mumbai in respect of the changes sought to be carried out in the records pertaining to the Suit property.

4. According to the Plaintiff, along with the said Agreement, the Defendant Nos. 1 and 2 had also signed General Power of Attorney dated 23rd August, 2001 in favour of the Plaintiff and his deceased father.

5. The Plaintiff has submitted in paragraph 4 of the Plaint that after the Defendant Nos. 1 and 2 transferred the property into his name and the name of his deceased father by Agreement dated 10th December, 2003 and the General Power of Attorney dated 23rd August, 2001, the Plaintiff through his Advocate gave a public notice on 16th April, 2011 in four newspapers stating that he has purchased the suit property from Defendant Nos. 1 and 2 to which he had not received any objections.

6. According to the Plaintiff, he learnt from one of the tenants of the suit building that Defendant No. 3 had handed over a letter dated 8th July, 2011 to all the tenants of the Suit building informing them that he purchased the Suit building under the Deed of Assignment dated 4th July, 2011. After having learnt of the said letter, the Plaintiff on 11th July, 2011 addressed a letter to all the tenants of the Suit building to disregard the claim of the Defendant No. 3 and not to attorn their tenancies to the Defendant No. 3. According to the Plaintiff, he also wrote a letter to the Sub Registrar of Assurance, Mumbai stating that he and his father had purchased the Suit property including the Suit building from Defendant Nos. 1 and 2 and that the Defendant No. 3 has no right in respect of the Suit property.

7. It is therefore submitted on behalf of the Plaintiff that he is the owner of the suit property and is in possession of the same. It is submitted that the reliefs sought in the Notice of Motion be granted in favour of the Plaintiff.

8. As against the above, the Defendant Nos. 3 and 4 have pointed out that the Mumbai Municipal Corporation (MMC) is the original Lessor of the Suit plot. By an Indenture of Lease in perpetuity dated 15th March, 1972, the MMC had assigned the leasehold rights in the Suit property to one Yusuf Laher, the husband of Defendant No. 1 and the father of Defendant No. 2. By a registered Deed of Assignment dated 4th July, 2011, Defendant No. 3 acquired the Suit property for a consideration of Rs. 1.09 Crores from all the legal heirs of late Shri Yusuf Ahmed Laher i.e. Mrs. Aisha Yusuf Laher, Mrs. Ateka Mohamed Hanif Matwadia (nee Ateka Yusuf Laher), Mrs. Akelah Yusuf Ali Makda (nee Akelah Yusuf Laher), Mrs. Fatimah Yusuf Lunat (nee Fatimah Yusuf Laher) and Mr. Asejad Yusuf Laher. The Defendant No. 3 thereafter applied to the MMC for transfer of lease. The MMC before transferring the lease / Suit property published notice dated 21st May, 2012 in newspapers inviting objections from members of the public a copy of which is annexed and marked as Exhibit-C to the Affidavit in Reply. The Defendant No. 3 also paid Rs.20,250/- as charges for publishing notices in newspapers and the receipt acknowledging payment of the said charges is annexed and marked as Exhibit-D to the Affidavit in Reply. By a registered Deed of Assignment dated 16th October, 2012, Defendant No. 3 further

assigned the Suit property to Defendant No. 4 for a consideration of Rs.1,26,51,500/- . The MMC vide letter dated 22nd June, 2013 directed the Defendant No. 3 to make payment of Rs.59,28,600/- to them for processing the transfer, which was paid by Defendant No. 4, for which the MMC has issued receipts. After completing the formalities, the MMC vide letter dated 24th July, 2013 informed the Defendant No. 3 that the name of Defendant No. 3 is entered as Lessees in their records. It is submitted that it is the Defendant No. 4 who is thereafter in possession of the Suit property and is collecting rent from the tenants and the submission made by the Plaintiff that he is in possession of the Suit property and is collecting rents from the tenants till date is false and incorrect.

9. It is submitted on behalf of Defendant Nos. 3 and 4 that earlier the Plaintiff was a Rent Collector, appointed to collect rent from the tenants of the Suit property. It is submitted that the purported writing dated 10th December, 2003 is signed only by Defendant Nos. 1 and 2, who are two of the many other legal heirs of the deceased Yusuf Laher. It is submitted that in any event the purported writing dated 10th December, 2003 is unregistered and not admissible in evidence. It is further submitted that the said writing is without any consideration and therefore void.

10. It is further submitted on behalf of Defendant Nos. 3 and 4 that as can be seen from the letter dated 2nd March, 2013 written by Defendant No. 4 to all

tenants of the Suit building, marked as Exhibit-K to the Plaint, the Plaintiff in March, 2013 itself was aware of the fact that the Defendant No. 4 intends to redevelop the Suit property. The Defendant No. 4 started obtaining consent letters from the tenants (Exhibits-F and F-1 to the Affidavit in Reply) and has now obtained letters of consent from most of the tenants and has also entered into Agreements for permanent alternate accommodation with the tenants. The Defendant No. 4 also entered into correspondence pertaining to redevelopment of the Suit property with MHADA. The Defendant Nos. 3 and 4 have also produced a letter dated 4th July, 2011 under which the possession of the Suit property has been handed over to Defendant No. 3 by the Defendant Nos. 1 and 2. The Defendant Nos. 1 and 2 have also written a letter of attornment dated 4th July, 2011 to the tenants, which is marked as Exhibit-I to the Affidavit in Reply. After the assignment of the Suit property to Defendant No. 4, Defendant No. 3 sent a letter of attornment to the tenants of the Suit building informing them to pay the rent to Defendant No. 4. A copy of the said letter of attornment is annexed as Exhibit-J to the Affidavit in Reply. Thereafter, Defendant No. 4 started collecting rents from the tenants of the Suit building. Defendant No. 4 has also collected the arrears of rent from the tenants as the earlier landlord had not collected the same. The copies of the few counter foils of the rent received from tenants are annexed as Exhibits-K to K-3 to the Affidavit in Reply.

11. It is further submitted on behalf of Defendant Nos. 3 and 4 that the

Suit building is in a very dilapidated state/condition. The same needs to be demolished and reconstructed. The Corporation had issued a letter dated 3rd January, 2014 to Mr. Hamid Gigani, partner of Defendant No. 4 for conducting the structural audit of the Suit property. A copy of the said letter is marked as Exhibit-L to the Affidavit in Reply. A copy of the structural report of the consultant, dated 5th February, 2014, setting out the condition of the Suit building is marked as Exhibit-M to the Affidavit in Reply.

12. I have considered the aforestated facts and the submissions advanced by the Learned Advocates appearing for the parties. From the Power of Attorney annexed by the Plaintiff dated 23rd August, 2001, it appears that initially the father of the Plaintiff was collecting rent from the tenants of the suit property. As stated earlier, the Plaintiff has relied upon the writing dated 10th December, 2013 (Exhibit-D to the Plaint) purportedly executed by and between Defendant Nos. 1 and 2 on one hand and the Plaintiff and his deceased father on the other. From a perusal of said writing, it is clear that the said writing is not an Agreement executed by and between Defendant Nos. 1 and 2 and the Plaintiff and his father. The said writing is in the form of a letter from Defendant Nos. 1 and 2 addressed to the Plaintiff and his father on a stamp paper of Rs.100/-, whereunder Defendant Nos. 1 and 2 have purportedly stated that in July, 2003 the Plaintiff and his father have paid the full agreed price of the Suit property to Defendant Nos. 1 and 2 and they have handed over possession of the Suit property to the

Plaintiff and his father. It is further stated in the said writing that till such time the property is conveyed to the Plaintiff and his father by registered Deed of Conveyance, they may continue to use the Power of Attorney executed by Defendant Nos. 1 and 2 in their favour dated 23th August, 2001. The said writing is admittedly not signed by the Plaintiff and / or his father. Though the said writing does not mention any consideration amount, according to the Plaintiff an amount of Rs. 52 Lacs was paid by the Plaintiff and his father in cash, to the Defendant Nos. 1 and 2 at London. Admittedly, the said document is not registered.

13. Again as stated hereinabove, according to the Plaintiff, the Defendant Nos. 1 and 2 had '**along with**' the said agreement had also signed a General Power of Attorney dated 23rd August, 2001 in favour of the Plaintiff and his deceased father. The Plaintiff is unable to explain as to how the said two documents could have been signed together as alleged since the alleged Power of Attorney dated 23rd August, 2001 and the alleged Sale Agreement is dated 10th December, 2003.

14. In paragraph 4 of the Plaint, the Plaintiff has stated that "*the Plaintiff further says that after the Defendant Nos. 1 and 2 transferred the property into his name and the name of his deceased father by the aforesaid Agreement and General Power of Attorney dated 23rd August, 2001, the Plaintiff through his Advocate Shri A.G Lalani having his office at 85, first floor, Erskine Road, Null Bazar, Mumbai – 400003 gave a public notice on 16th April, 2011 in The Times of India, Mumbai*

Samachar, Navbharat Times and Free Press Journal stating that they have purchased the above said Suit property from Defendant Nos. 1 and 2". Both the documents dated 23rd August, 2001 and 10th December, 2003 do not transfer the property into the name of the Plaintiff and his deceased father. The Plaintiff has not produced any evidence in support of his case that an amount of Rs.52 Lacs was paid to Defendant Nos. 1 and 2 in cash at London by the Plaintiff and his father. Again, Defendant Nos. 1 and 2 who have purportedly sold the Suit property to the Plaintiff and his father are not the only owners of the Suit property. The Plaintiff has also not explained as to why no steps whatsoever were taken by the Plaintiff and his deceased father from 2003 to 2011 such as getting the property transferred in their names or informing the tenants that they have purportedly purchased the Suit property. The Plaintiff has also not explained as to what was the occasion for the Plaintiff to issue a public notice eight years after the purported purchase of the Suit property. The Plaintiff has also not produced any evidence to show that the Plaintiff is till date in possession of the Suit property or is collecting rent till date in respect of the Suit property.

15. The Plaintiff has not explained as to why despite his claim of purchasing the Suit property in the year 2003, he waited for eight long years to address a letter to the tenants, only after the Defendant No. 3 addressed a letter to them in the year 2011. Again no explanation has come forth from the Plaintiff as to why no steps were taken since 2003 to have the Suit property transferred in the

names of the Plaintiff and his father or either of them since the year 2003.

16. I am therefore of the view that the Plaintiff has not made out even a prima facie case of ownership of the suit property or being in possession of the suit property as alleged.

17. As set out hereinabove, the Defendant No. 3 has produced a registered deed of assignment dated 4th July, 2011 executed by all the legal heirs of the late Yusuf Laher whereunder the suit property is sold by his heirs to Defendant No. 3 for an amount of Rs. 1.09 crores. Thereafter Defendant No. 3 has executed the Deed of Assignment dated 16th October, 2012 in favour of Defendant No.4 for consideration of Rs. 1,26,51,500/- . The said Deed of Assignment is also registered. Since late Yusuf Laher had taken the suit property from the Corporation under a lease agreement, Defendant Nos. 3 and 4 paid a sum of Rs. 59,28,600/- to the Corporation and got the suit property transferred in their names. In the meantime, the Defendant No. 4 has obtained consent from several tenants of the Suit building for redevelopment of the Suit property and has also entered into the Agreements for permanent alternate accommodation with the tenants. The Defendant No. 4 herein has also produced the correspondence with the Corporation qua the dilapidated condition of the Suit building, the report obtained from the Structural Engineer by the Defendant No. 4 and the steps taken by him to redevelop the Suit property. The Defendant Nos. 3 and 4 have therefore prima facie established that Defendant No. 3 initially purchased the

Suit property for Rs. 1.09 crores from all the legal heirs of late Yusuf Laher through a registered Deed and thereafter further assigned his rights in favour of the Defendant No. 4 again under a registered Deed dated 16th October, 2012 for consideration of Rs.1,26,51,500/- and also took steps to get the suit property transferred in their names by paying a substantial amount of Rs.59,28,600/- to the Corporation and has also taken steps for redevelopment of the Suit property.

18. In view thereof, the balance of convenience is also in favour of Defendant Nos. 3 and 4 and not the Plaintiff. The question therefore of granting any ad-interim relief as claimed by the Plaintiff does not arise. If any reliefs, as prayed, are granted to the Plaintiff, grave and irreparable loss, harm, damage, injury and prejudice will be caused not only to Defendant No. 4 but also to the tenants residing in the suit building, the condition of which has substantially deteriorated as established from the Structural report issued by the Structural Engineer (Exhibit-M to the Affidavit in Reply) and Defendant No. 4 has already taken steps for redevelopment of the same.

19. The Notice of Motion is therefore dismissed with costs. The hearing of the Suit is expedited. The Defendants are directed to file their Written Statements on or before 31st January, 2016. Place the Suit for framing of issues on 9th February, 2016.

(S.J.KATHAWALLA, J.)