

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 981 OF 2014
IN
SUIT NO. 769 OF 2007
ALONG WITH
NOTICE OF MOTION NO. 22 OF 2015
IN
SUIT NO. 769 OF 2007

Smt. Saroj M. Bijlani & 2 Ors.

...Plaintiffs

Versus

Chandru G. Bijlani & 9 Ors.

...Defendants

Dr. Birendra Saraf, *a/w Mr. Aditya Shiralkar, Mrs. Dipali Khare i/b*
M/s. Shiralkar & Co., for the Plaintiffs.
Mr. S. Malik, *for the Defendants Nos. 1 to 4.*

CORAM: G.S. PATEL, J
DATED: 2nd March 2015

PC:-

1. Notice of Motion No. 981 of 2014 is filed by the Plaintiffs while Notice of Motion No. 22 of 2015 is filed by Defendants Nos. 1 to 4.

2. Briefly the dispute pertains to a plot of land with a ground and three floor structure known as Bijlani Bhawan at 738, Khar Pali Road, TPS-III, Bandra, Mumbai. The suit seeks a partition of this property. The property is admittedly is HUF property. The 1st Plaintiff is the wife of one Manohar Bijlani, one of the four children of one Girdharilal Bijlani. His four children are Manohar, Chandru (Defendant No. 4), Kumar (Defendant No. 5) and Gul. Defendant No. 2 is the wife of Chandru and Defendants Nos. 3 and 4 are their children. Defendants Nos. 6 and 7 are the children of Kumar (Defendant No. 5) and Defendants Nos. 9 and 10 are the children of Defendant No. 8, the widow of Gul Bijlani. Girdharilal had two borthers, Chellaram and Kamal. Their father was one Diwan Tota Singh.

3. Plaintiff No. 2 has after the filing of the suit purchased the shares of Defendants Nos. 5 to 7. The Plaintiffs are thus 50% owners of the suit property. Defendants Nos. 1 to 4 have a 25% share in that property; and Defendants Nos. 8 to 10 have the remaining 25%.

4. The Plaintiffs are permanent residents of Delhi. Defendants Nos. 1 to 4 occupy premises admeasuring about 1500 sq.ft. on the 3rd floor and Defendants Nos. 8 to 10 occupy about 900 sq.ft on the 2nd floor of the building.

5. The dispute in these two Motions relates to Flat No. 4 (650 sq. ft.) on the first floor and Flat No. 2 on the ground floor of Bijlani Bhawan.

6. Briefly stated the Plaintiffs' ask that they be permitted to occupy Flat No. 4 on the first floor, this supposedly having been recently vacated by its erstwhile tenants, Chandrika and Prakash Ahuja. The Plaintiffs say that the 1st Plaintiff wishes to move from Delhi to Mumbai since the cold weather in Delhi does not suit her health. The Plaintiffs have no other residence in Mumbai.

7. Defendants Nos. 1 to 4 , on the other hand, claim that this relief is sought by the Plaintiffs only to harass those Defendants. Defendants Nos. 1 to 4 are indeed occupying premises of about 1500 sq. ft on the 3rd floor. These are two families living in a single accommodation. They have need for the premises on the 1st floor (Flat No. 4) for residence as also of Flat No. 2 on the ground floor where Defendant No. 3, a Medical Practitioner proposes to start a medical care centre.

8. Dr. Saraf, learned Counsel for the Plaintiffs, says that Defendants Nos. 1 to 4 are undeserving of any relief. They allege that Defendants Nos. 1 to 4 violated interim orders by taking possession of premises and occupying these despite orders of the Court and undertakings given to the Court that they would not do so.

9. Mr. Malik, learned Advocate for Defendants Nos. 1 to 4, is at some pains to point out that it is his clients who have spent huge amounts on maintaining the building from 1960 onward. While Defendant No.1 has spent consistently on maintenance and improvements, nothing has been contributed by the Plaintiffs and the other Defendants. The 1st Defendant has also been pursuing

legal action against various tenants. In this respect, Mr. Malik is correct, for it is undoubtedly a matter of record that it was the 1st Defendant who filed eviction suits against the original tenants of Flat No. 2 on the ground floor and Flat no. 4 on the first floor. Both these litigations appears to have been settled, but at a very late stage in the proceedings. Mr. Malik also points out that Flat No. 2 has remained locked for nearly two years and requires to be opened to be cleaned. Under a previous order of the Court, the key to Flat No.2 has been kept in the custody of the Court, but none has attended to its cleaning or maintenance.

10. I have considered carefully the rival contentions of the parties. It seems to me that Mr. Malik is correct at least in one significant respect and that is that it is his client who has spent throughout on the care and maintenance of the building and has also spent a considerable amount for litigation in resuming possession of tenanted premises. These litigations most certainly have been expensive. The Plaintiffs do not have any material on record to show that they have contributed anything at all to the upkeep of building. Dr. Saraf's only submission, as far as I can tell, is that since Defendants Nos. 1 to 4 already have 1500 sq. ft. in their possession on the third floor, equity demands that the Plaintiffs be allowed to use 650 sq. ft. either on the ground floor or the first floor.

11. It rather seems to me that this is a very narrow approach towards balancing equities. It completely overlooks the growing needs of Defendants Nos. 1 to 4. After all there are two families residing together on the third floor, and Mr. Malik's submission that Defendant No. 3 wishes to separate with his own family and

also to start a medical care centre does not seem to me unreasonable. Defendants Nos. 1 to 4 are entirely Mumbai based. The Plaintiffs on the other hand seem to have settled in Delhi for good, and seem to have done so a very long time ago. Whether or not this was following a partition of a HUF as Mr. Malik suggests is a matter to be decided after evidence. But the undeniable fact is that the Plaintiffs have in fact moved their base and their home to New Delhi. To say now that that the weather in Delhi does not any longer suit Plaintiff No. 1 seems to me to be an argument for convenience rather than a submission founded in fact.

12. It is not possible in these circumstances to accept the plea of the Plaintiffs. Indeed the second prayer to the Plaintiffs' Notice of Motion No. 981 of 2014 is one that, in my view, Mr. Malik correctly describes as a dog in the manger attitude; for the alternative prayer by the Plaintiff is that the keys of flat No. 4, possession of which was secured by Defendant No. 1 following a long, expensive and bitter litigation should be deposited in this Court. In short the approach of the Plaintiffs seem to be that if they cannot have flat No. 4, neither should Defendants Nos. 1 to 4 irrespective of how genuine their need.

13. The Plaintiffs' Notice of Motion No. 981 of 2014 is dismissed with no order as to costs.

14. It seems to me self-evident that allowing premises to remain locked indefinitely can only cause damage to those premises and to the surrounding areas. All premises should be used so that they are well maintained and looked after. The request of Defendants Nos. 1

to 4 is reasonable. Indeed, I must note Mr. Malik's candour in stating that his clients were in error in occupying the premises without leave of the Court. Today, by his Motion it is that very leave which Defendants Nos. 1 to 4 seek.

15. Hence the following order:

- (a) The keys of flat No. 2 on the ground floor deposited with the Court pursuant to the order dated 29th December 2012 are to be handed over to Defendants Nos. 1 to 3. Defendants Nos. 1 to 3 will clean this flat at their cost and expense. They will carry out such necessary non-structural repairs that are necessary to put that flat into habitable condition. These too will be done at their own costs and they will not demand reimbursement of any of these costs at any time.
- (b) Defendant No. 3 is permitted to use flat No. 2 for the purposes of medical care centre, subject to all applicable costs, regulations and permissions.
- (c) Defendant No. 3 is also permitted to use flat No. 4 on the first floor for his residential use along with his family.

16. Defendants Nos. 1 to 4 are put to notice that this is an *ad-hoc* interim arrangement pending the hearing and final disposal of the suit. At the time of final disposal of the suit, and in the event of a division by metes and bounds, Flats Nos. 2 and 4 may not come to

the share of Defendants Nos. 1 to 4. By virtue of this interim and *ad-hoc* arrangement no rights or equities are created in favour of Defendants Nos. 1 to 4, nor are they entitled to claim any title, equities or rights on that basis at any time. The present order is without prejudice to the rights and contentions of both sides.

17. Notice of Motion No. 22 of 2015 is disposed of in these terms with no order as to costs.

18. Dr. Saraf applies for a stay of this order. Stay refused.

(G. S. PATEL, J.)