IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3827 OF 2009
IN
SUIT NO. 2685 OF 2009

M/s.Meera Housing Pvt.Ltd. …Plaintiff
vs.
M/s.Khatau Makanji & Co. & Ors. ....Defendants

Mr.S.J. Mishra with Pushpa Tiwari and Gaurav Singh i/b. SRS Legal for Plaintiff.
Mr.Joaquim Reis, Senior Advocate with Mr.Rajesh Kachare for Defendant Nos.1 and 4.
Mr.Shailesh Shah, Senior Advocate i/b. Khona & Kayser for Defendant No.2.
Mr.Sanjay Jain i/b. J.N. Pandhi for Defendant Nos.3 and 5.

CORAM : S.C. GUPTE, J.

18 DECEMBER 2015

P.C. :

The notice of motion is taken out by the Plaintiff for a temporary injunction restraining the Defendants from dispossessing the Plaintiff from the suit property and also from acting upon the deed of cancellation dated 31 December 2005 as also agreement for development dated 29 July 2006.

2 The Plaintiff claims to be the owner of the suit property and in its exclusive use and occupation. The suit property consists of a land bearing Survey No.110 (Part), Survey No.111, Hissa No.1 (Part) corresponding to CTS No.178, 178 (1) to 178(4, 179(Part) admeasuring 16,947 sq.mtrs. situated at Magathane, Taluka Borivali, Mumbai Suburban District. There are various structures standing on the suit property. The suit property is already declared as a slum area under Section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 ('Slum Act”). Defendant No.1 is said to be the previous owner of the suit property. The Plaintiff claims to have purchased the suit property under an agreement dated 8 August 1995 executed by Defendant

No.1 through its Constituted Attorney, namely, Defendant No.4. This agreement has been lodged for registration. The Plaintiff also claims that in pursuance of this agreement, a deed of conveyance has been executed by a Constituted Attorney of Defendant No.1 in favour of the Plaintiff. It is the case of the Plaintiff that by a deed of cancellation dated 31 December 2005, Defendant No.1 has purportedly cancelled the agreement for sale and pursuant to such cancellation, entered into a development agreement with Defendant No.2. It is the case of the Plaintiff that in terms of the agreement for sale and deed of conveyance referred to above, the Plaintiff is a lawful owner of the suit property and the Defendants have no subsisting right, title or interest therein. The Plaintiff, accordingly, seeks a declaration of its ownership of the suit property together with a declaration of nullity in respect of the deed of cancellation and development agreement and a permanent restraint on the Defendants from acting upon the deed of cancellation and the development agreement.

3 In reply, it is the case of Defendant Nos.2 and 4 as well as Defendant Nos.3 to 5 that after the execution of the agreement for sale dated 8 August 1995, there was an agreement between the directors of the Plaintiff and third parties whom the Defendants claim to represent to develop the suit property through Defendant No.2. It is submitted that an MOU was, accordingly, signed between the parties as far back as in the year 2000. It is submitted that pursuant to this MOU, the agreement for sale executed in favour of the Plaintiff was duly cancelled by the vendor, i.e. Defendant No.1. It is submitted that in pursuance of this cancellation, an agreement for development was duly executed by Defendant No.1 in favour of Defendant No.2 on 29 July 2006. It is submitted that Defendant No.2 is currently in the process of developing the suit property through a slum redevelopment proposal. It is submitted that there is an LOI already issued by SRA on 20 June 2009; that consents of more than 70% of occupants of the suit property have been obtained by Defendant no.2; and that Defendant No.2 is in the process of taking suitable further steps for the development of the property. It is submitted that the purported deed of conveyance dated 31 October 2007, on the basis of which the Plaintiff claims ownership of the suit property, does not create any title in the Plaintiff inasmuch as the deed is executed by a person, who

does not have any authority from the owner of the suit property, namely, Defendant No.1. It is submitted that the Plaintiff's own case, as averred in the plaint, is that the Plaintiff came to know of the deed of cancellation dated 31 December 2005 on 5 June 2006. It is submitted that there is no explanation for the gross delay and laches in filing the suit and moving the interlocutory application.

4 In the first place, it is important to note that in the present suit, the Plaintiff does not seek specific performance of the agreement for sale dated 8 August 1995. On the other hand, it is the case of the Plaintiff that by virtue of the agreement for sale and a deed of conveyance executed by the owner of the suit property (Defendant No.1) in pursuance thereof, the Plaintiff has become a sole owner of the suit property, entitled to protect its possession and that the Defendants have no subsisting right, title or interest in the suit property. When the agreement for sale dated 8 August 1995 was executed in favour of the Plaintiff, the Plaintiff was represented by its original promoters - one Digamber Mahadev Bagwe and one Vasant Hemraj Mehta, who were also the directors of the Plaintiff. The record bears out that Bagwe was subsequently declared as an insolvent. The record also indicates that in the year 2000, an MOU was executed between the Plaintiff represented by Mehta (referred to in the MOU as “Mehta group”), one Leelaram S. Jangid (referred to as “Jangid group”), one Yeshwant C. Mody (referred to as “Mody group”), and Dinesh B. Shah and Rajnikant Kadakia (referred to as “Dinesh group”). The MOU incorporated an agreement between these four groups to develop the suit property through a company, namely, Imprint Constructions Pvt.Ltd. - Defendant No.2 herein. The MOU provided for the respective equities to be held by the four groups in Defendant No.2. The MOU also provided that necessary papers and documents would be prepared for transfer of development rights from the Plaintiff and / or original owner of the suit property to Defendant No.2. *Prima facie,* it appears that the cancellation of the suit agreement by the deed of cancellation of 31 December 2005 was in pursuance of this MOU. It also appears that in furtherance of this MOU, a development agreement has been duly executed by the original owners of the suit property (Defendant No.1) in favour of Defendant No.2. Defendant

No.2 has produced voluminous evidence before this Court to show that ever since the development agreement of 29 July 2006, it has been in possession of the suit property exercising dominion over it and taking care of the outgoings in respect of it. It is also brought on record that Defendant no.2 has taken various steps including the processing of an application for a slum redevelopment scheme. The LOI issued by SRA and acknowledgement by SRA of consents of as many as 303 individual occupants / slum dwellers within the suit property are placed on record. In the premises, it is not surprising that the suit is filed by none other than Bagwe, who was already declared an insolvent prior to his signing and verifying the plaint. It now transpires that subsequently, Mehta has jumped onto the bandwagon and claimed to be supporting Bagwe's case and asserting the Plaintiff's rights under the agreement for sale and the so called of deed of conveyance.

5 If one has regard to the deed of conveyance, it is abundantly clear that the deed is executed purportedly on behalf of the owners – Defendant No.1 by Ketan B. Jain, who claims to be a Constituted Attorney of Defendant No.1. Jain claims to be the Constituted Attorney through a resolution passed at the meeting of the board of directors of the Plaintiff company held on 25 October 2007. The Plaintiff itself has no authority to execute any deed of conveyance in its own favour and there is no question of the Plaintiff conferring such power on any other person. Originally, the agreement for sale dated 8 August 1995 in favour of the Plaintiff was executed by Defendant No.4 as a Constituted Attorney of Defendant No.1. This Power of Attorney itself does not confer any power on Defendant No.4 to execute conveyance of the suit property. It appears that Defendant No.4 under a clause of the Power of Attorney allowing him to substitute and sub-delegate his authority to other attorney/s, appointed three individuals, namely, Bagwe, Mehta and Jangid, as Constituted Attorney, for exercising the powers under the original Power of Attorney. When the original Power of Attorney itself does not confer any power to execute conveyance in respect of the suit property, there is no question of the original Constituted Attorney sub-delegating any authority to execute conveyance in respect of the suit property. In any event, the Power of Attorney rests with the individuals and

not the Plaintiff company. There is, in the premises, absolutely no authority in the Plaintiff to appoint any person as its delegate or agent to carry out the purposes of the original Power of Attorney.

6 Learned Counsel for the Plaintiff submits that the right, title and interest in the suit property vests in the Plaintiff and such right cannot be defeated by a mere deed of cancellation unilaterally exercised by the original vendor. Learned Counsel relies upon a Division Bench judgment of the Madras High Court in the case of **Latif Estate Line India Ltd. vs. Mrs.Hadeeja Ammal**[1] and submits that a concluded transfer of property cannot be defeated by a deed of cancellation executed unilaterally by the vendor. No doubt, as held by the Madras High Court in that case, there is no provision in the Transfer of Property Act or in the Registration Act providing for cancellation of a deed of sale and once the property is duly transferred to a purchaser, the vendor cannot unilaterally create, assign, limit or extinguish any right, title or interest in the immovable property by a unilateral deed of cancellation. That, however, would be the position where there is a clear sale in favour of the third party purchaser. In the present case, on the date of cancellation of the agreement for sale, all that the Plaintiff had was an agreement for sale, conferring on it the right of specific performance of the agreement. This right cannot be elevated to the status of interest in immovable property or ownership thereof. Such agreement can very well be cancelled by a deed of cancellation executed by the vendor. The merits of such cancellation can, of course, be agitated in a suit filed by the purchasers.

7 Apart from these difficulties in the way of the Plaintiff, there is one more important reason why the Plaintiff must fail in its interlocutory application. The Plaintiff has clearly suppressed the MOU executed between the four groups, one of which was represented by the same director of the Plaintiff, who is the person prosecuting the present suit on behalf of the Plaintiff. The MOU is an importance piece of evidence to show that after the agreement for sale in favour of the Plaintiff, by consent of the directors of the Plaintiff, the development of the suit property was to be entrusted to Defendant No.2 and that the deed of

1 **WA Nos.592 & 938 of 2009, W.A. No.592 of 2009 dt.10.2.2011**

cancellation and development agreement in pursuance thereof in favour of Defendant No.2 are clearly a fall out of this MOU. The MOU, to which the promoter and director of the Plaintiff is a party, has been deliberately suppressed from this Court. The Plaintiff must take the consequence of such suppression.

8 Apart from the foregoing reasons, there is no explanation of the undue delay and laches on the part of the plaintiff in prosecuting the present suit and also pressing the interlocutory application. It is the Plaintiff's own case in the plaint that the Plaintiff came to know of the deed of cancellation on 5 June 2006. There is no explanation why in that case, the suit was filed nearly three years after such knowledge. The plaint is declared on 21 April 2009. The notice of motion was taken out in November 2009. There is no ad-interim application in favour of the Plaintiff till date in the notice of motion.

9 In the premises and considering the fact that Defendant No.2 has taken several steps including obtaining of an LOI from SRA and consent of more than 70% occupants of the suit property for a redevelopment scheme, it is not possible to grant any interim relief to the Plaintiff.

10 The notice of motion is dismissed. The costs shall be the costs in the cause.

(S.C. Gupte, J.)