

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

CIVIL REVISION PETITION No. 408 of 2015

P.C:

This C.R.P., by original plaintiff No.2, is against the order, dated 22.08.2012, passed on I.A.No.757 of 2007 in O.S.No.291 of 2007, whereby the interim application, originally filed by defendant No.9 under Section 151 read with Section 144 of the Code of Civil Procedure, seeking restitution of the suit premises has been allowed. The interim application was originally filed by defendant No.9, who died during pendency of the said application and respondent Nos.2 to 10 were brought on record as his legal representatives.

Petitioner-plaintiff No.2 along with one Hafeezunnisa Begum filed suit for partition. Hafeezunnisa Begum died during pendency of the suit. Original defendant No.9-Mohd.Abdul Razzak claimed to be the purchaser of the suit property by registered sale deed, dated 25.03.1981. It has come on record that he had filed R.C.No.313 of 2000 against defendant No.3, for possession of the suit premises. The R.C. was decreed and the judgment and decree was confirmed in appeal in 2007. The decree obtained by defendant No.9 was executed and he was put in possession of the suit premises by the Bailiff on 08.02.2007 itself. It has also come on record that the petitioner-plaintiff No.2 and the deceased plaintiff No.1 executed an agreement of sale, dated 13.11.2007,

along with other defendants i.e. defendant Nos.1 to 8 in favour of third parties i.e. Mr.Moin Shareef S/o.Mr. Ahmed Shareef and Mr. Mohd.Ahsan Shareef S/o. Mr.Mohd.Ibrahim Shareef. In the agreement, it is clearly mentioned that the plaintiffs and other defendants put the third parties in possession of the premises.

That apart, in the present suit (O.S.No.291 of 2007), the plaintiffs had filed an application for interim injunction against defendant No.9, being I.A.No.440 of 2007 and that was dismissed by the Court below *vide* order, dated 13.04.2007. In the order, it is not in dispute, there is a categoric finding that the plaintiffs were not in possession as on the date of the suit.

In this backdrop, defendant No.9 filed application for restitution of possession of the suit premises, being I.A.No.757 of 2007 alleging forcible dispossession by plaintiffs and other defendants from the suit premises.

I have heard learned counsel for the parties and with their assistance, gone through the order and other material placed before the Court. Learned counsel for the petitioner also placed additional documents before the Court, such as passport and voter I.D. card which were issued long back showing the address of the defendants as of the suit premises. I have perused documents also.

Having regard to the fact that the injunction as sought by the petitioner and the deceased plaintiff No.1 was refused holding that they could not prove their possession over the suit property and

considering that the petitioner and the deceased plaintiff No.1 along with other defendants executed agreement of sale in favour of third party stating therein that they have put the third party in possession of the premises, in my opinion, the order passed by the Court below does not warrant interference at this stage of proceedings.

Hence, C.R.P. is dismissed.

Having regard to overall facts and circumstances of the case, the trial Court shall endeavour to dispose of the suit as expeditiously as possible and preferably within a period of one year from today. Parties are directed to cooperate for disposal of the suit within the stipulated time. It is needless to mention that the trial Court shall deal with the suit on merits in accordance with law and uninfluenced by the observations made in the impugned order and this order.

At this stage, learned counsel for the petitioner submits that the petitioner does not have any desire to carry this order further and the petitioner would be satisfied if he is given some breathing time to vacate the premises. He prayed for three months time. Learned counsel for the respondents has no objection for granting three months time for vacating the premises.

In view of the submissions of the learned counsel for the parties, the petitioner and other occupants of the premises, who are parties to the suit, are directed to handover possession of the suit premises on or before 01.06.2015. It is needless to mention

that the petitioner shall furnish undertaking in this Court to that effect within a period of two weeks from today with an advanced copy thereof to the Advocate for the respondents.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

Dt:20.02.2015
kdl