

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1683 OF 2016

PRIYAMVADA YASHWANT GAILAD ...Petitioner
Versus
SHRI. HITESH K. MEWADA AND ORS. ...Respondents

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Mr. Amrut Joshi i/b. Rushabh Sheth, Advocate for Petitioner.
Mr.R.M. Upadhyay a/w. Mr.Shiv Malhotra, Advocate for
Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 22nd FEBRUARY, 2016

P.C.

1. Heard Mr. Amrut Joshi, learned Counsel for the petitioner and Mr. R.M. Upadhyay, learned Counsel for respondent No.1, at length.

2. Mr. Joshi seeks leave to delete the respondent Nos.2 and 3. Leave granted. Amendment shall be carried out forthwith.

3. Rule. Mr. Upadhyay waives service on behalf of respondent No.1. At the request and by consent of the parties,

rule is made returnable forthwith and the petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 12.1.2016 passed by learned District Judge-10, Thane below Exh.18 in Misc. Civil Appeal No.279/2015. By that order, learned District Judge declined to grant status quo order which was already granted for a specific period upto 1.1.2016 on the ground that the petitioner failed to take any steps to serve the summons on the third respondent.

5. The petitioner, hereinafter referred to as the 'plaintiff', has instituted Special Civil Suit No.527 of 2013 against respondent No.1 (defendant No.1) and respondent Nos.2 & 3 (defendant Nos.2 & 3) *inter alia* for declaration that the sale deed dated 8.1.2013 allegedly executed by her in favour of respondent No.1 hereinafter referred to as 'defendant No.1' is fraudulent, got up, fabricated, null, void and invalid document and not binding and enforceable against the plaintiff and be cancelled by the decree and the defendants be directed to deliver up the original copy of the sale deed; for declaration that the registered leave

and licence agreement dated 8.1.2013 is illegal, improper, bad in law, void ab initio, invalid and not binding and enforceable against the plaintiff and be cancelled by the decree and the defendants be directed to deliver up the original copy of said leave and licence agreement; for perpetual injunction restraining defendants from acting upon the sale deed and leave and licence agreement and from alienating/transferring and from creating third party interest in and over flat No.103, 1st floor, Rutu Park Building No.A-3 and A-4 Co-operative Housing Society Limited, Building A-4, Near Brindavan Society, Thane (W) 400 601 (for short, 'suit premises'); for perpetual injunction restraining defendant No.1 from acting upon the notice dated 15.6.2013 as also from disturbing possession of the plaintiff over the suit premises.

6. During pendency of the suit, the plaintiff took out application exhibit-5 for temporary injunction restraining the defendants from disturbing her possession over the suit property and also from acting upon notice dated 15.6.2014. On 10.10.2013 the learned trial Judge directed the defendants to maintain status quo about suit premises to the extent of prayer

clauses (a) and (c) till next date of application. By judgment and order dated 11.12.2015, learned trial Judge dismissed the application. Aggrieved by that decision, the plaintiff preferred Misc. Civil Appeal and also took out application praying for reliefs claimed in exhibit-5. On 29.12.2015, learned District Judge directed the parties to maintain status quo and further directed the plaintiff to comply with the provisions of Order 39 Rule 3 of CPC and to pay the charges of special bailiff on or before 30.12.2015.

7. It appears that the plaintiff filed application Exh.18 for extension of status quo passed on 29.12.2015. By the impugned order, learned District Judge declined to continue the status quo on the ground that the plaintiff failed to take any steps to serve the summons on the third respondent and the status quo order granted for specific period i.e. upto 1.1.2016. Mr. Joshi submitted that this order of status quo was extended for a period of 13 days from 1.1.2016.

8. In support of this petition, Mr. Joshi strenuously contended that the plaintiff has specifically averred plea of fraud. He contended that defendant No.2 is her son and was

badly in need money. Defendant No.1 agreed to give loan to defendant No.2. He submitted that defendant No.2 represented the plaintiff and that he is availing loan from defendant No.1 and for that purpose her signatures are necessary. The plaintiff believed defendant No.2 being her son and signed the documents. Taking advantage of these facts, defendant No.1 got the sale deed as also leave licence agreement registered. He further submitted that in the year 2013, the market value of the suit flat was to the tune of Rs.80 Lakhs. As against this, the consideration as contained in alleged sale deed is Rs.20 Lakhs. As against this, in fact the plaintiff was paid hardly Rs.5,50,000/- and not even Rs.20 Lakhs as reflected in the sale deed. He submitted that the defendant Nos.1 and 2 misrepresented the plaintiff and she signed these documents in good faith.

9. He submitted that defendant No.1 has initiated proceedings before the Competent Authority under the Maharashtra Rent Control Act, 1999 (for short, 'the Act'). By order dated 29.7.2015, the Competent Authority rejected the application made by the applicant for leave to defend and on the

same day allowed application under Section 24 and directed the plaintiff to hand over vacant and peaceful possession of the suit premises. Aggrieved by this decision, the plaintiff has preferred Revision Application before the Commissioner under Section 44 of the Act and same is pending. He, therefore, submitted that till pendency of the suit, the status quo granted by learned District Judge on 29.12.2015 may be continued.

10. He further submitted that respondent No.3-defendant No.3 is not a contesting respondent. Learned District Judge, however, declined to continue the status quo on the ground that the plaintiff failed to take any steps to serve summons on the third respondent. He submitted that respondent No.1 is the only contesting respondent in the appeal and not the third respondent. Respondent No.1 / defendant No.1 is duly served and in fact he appeared before the learned District Judge. In short, he submitted that this cannot be a ground for not continuing the status quo. If the status quo order is not continued, the Misc. Civil Appeal will be rendered infructuous and if the plaintiff is dispossessed during the pendency of her suit it will cause great prejudice to her. For all these reasons,

he submitted that status quo may be continued during pendency of the suit.

11. On the other hand Mr. Upadhyay supported the impugned order. He has taken me through the trial Court's order and in particular paras-5 and 7 thereof. He further states that defendant No.1 is present in the Court and upon taking instructions from him, Mr. Upadhyay states that defendant No.1 will not create third party interest on the basis of the sale deed dated 8.1.2013. Defendant No.1 also will not part with possession of suit premises in case he gets possession. Defendant No.1 will also abide by the decision of the suit and in case the suit is decreed, he will hand over vacant and peaceful possession of the suit premises to the plaintiff subject to right of defendant No.1 to challenge the order in case suit is decreed against him. The statements made by Mr. Upadhyay, on instructions, are recorded. He has tendered photo copy of pan card of defendant No.1, which is taken on record and marked "X" for identification.

12. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material

on record.

13. As noted earlier, the plaintiff has instituted the suit for cancellation of the registered sale deed dated 8.1.2013 and the registered leave and licence agreement dated 8.1.2013. It is the case of the plaintiff that defendant No.2 wanted to avail loan from defendant No.1. Defendant Nos.1 and 2 misrepresented and obtained her signatures on the purported sale deed and leave and licence agreement. Believing the representations made by defendant Nos.1 and 2, she executed those documents in good faith. In short, it is the case of the plaintiff that she never executed sale deed in favour of defendant No.1 and that defendant No.1 did not execute leave and licence agreement in her favour.

14. During pendency of the suit, the plaintiff took out application Exh.5. While dismissing the application, in para-5 learned trial Judge noted that on every page of sale deed, signatures of the plaintiff as well as the defendant appear. The NOC issued by the society is annexed to the sale deed. The NOC was given by the society to the plaintiff on 6.1.2013. On 8.1.2013, defendant No.1 addressed a letter to the

Chairman/Secretary of the society informing that suit premises has been sold by the plaintiff to him. The plaintiff has also tendered her resignation as member of the society. The plaintiff also gave another letter on 8.1.2013 giving her no objection to transfer all her right, title and interest in favour of defendant No.1. Learned trial Judge, therefore, *prima facie* observed that the suit premises has been voluntarily transferred by way of sale deed on 8.1.2013 to defendant No.1.

15. In paragraph-7, the learned trial Judge also referred to the registered leave and licence agreement dated 8.1.2013 and the order dated 29.7.2015 passed by the Competent Authority, Konkan division, Mumbai in case No.69/2013. It was further observed that the plaintiff is in possession of the suit premises since the date of execution of the sale deed as a licensee. The Competent Authority has passed eviction order against the plaintiff and she is directed to hand over vacant possession of the suit premises to defendant No.1. Therefore, the Court cannot stop the due process of law nor grant stay to execution of the order passed by the Competent Authority. In case the plaintiff establishes her case by leading evidence she will be

entitled to a decree and at this stage the Court cannot stop the execution of the order passed by the Competent Authority. Learned trial Judge was also of the view that the plaintiff pleaded fraud as also misrepresentation which at this stage cannot be gone into. Aggrieved by the same, the plaintiff preferred Misc. Civil Appeal and learned District Judge declined to continue the status quo order. I find substance in the submissions of Mr. Joshi that learned District Judge was not justified in declining to continue status quo on the ground that the plaintiff failed to take steps to serve the summons on third respondent. Mr. Upadhyay was not in a position to demonstrate that the third respondent is a contesting respondent. The order also records that respondent Nos.1 and 2 appeared before the Court. In other words, merely because the plaintiff could not serve the summons on third respondent that cannot be a ground for not continuing the order of status quo. At the same time, *prima facie* at this stage it cannot be ignored that defendant no.1 is relying upon the registered sale deed and the registered leave and licence agreement. Explanation to Section 24 provides that an agreement of licence in writing shall be the conclusive evidence of the facts therein. Section 55 of the Act

reads thus :

“55. Tenancy agreement to be compulsorily registered.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908 (XVI of 1908).

(2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.

(3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both.”

Perusal of sub-section [2] thereof shows that the responsibility of getting tenancy agreement/leave and licence agreement registered is on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or

have been let out to him, shall prevail, unless proved otherwise. In the present case the leave and licence agreement is in writing and is also registered. In view of explanation to Section 24 and Section 55 of the Act, at this stage the agreement of licence in writing is conclusive proof of the facts stated therein. Understood thus, *prima facie* at this stage it has to be held that after execution of the sale deed the plaintiff is divested of title and *prama facie* she is in possession of the suit premises in the capacity as a licensee.

16. As noted earlier, the Competent Authority has passed eviction order against which the plaintiff has instituted revision application before the Commissioner and the same is pending. In view thereof, there shall be status quo pending Revision Application before the Commissioner. Mr. Joshi submitted that the plaintiff is not admitting correctness and contents of sale deed as also leave and licence agreement as she claims ownership over the suit property. In view thereof, without prejudice to the rights and cotnentions of the parties it is clarified that the plaintiff's occupation on the suit premises is as a licensee and shall be subject to the outcome of the decision of

the Additional Commissioner. In view thereof, the impugned order deserves to be modified. The plaintiff's possession in the suit premises shall be treated as a licensee subject to the outcome of decision by the Additional Commissioner. Defendant No.1 will not create third party interest on the basis of the sale deed dated 8.1.2013 and in case he gets possession of the suit premises, he will not part with the possession until disposal of the suit. Defendant No.1 shall abide by the outcome of the suit and will hand over vacant and peaceful possession in case the suit is decreed, subject to his right to challenge that order in case the suit is decreed against him.

17. It is made clear that the observations made hereinabove are tentative and prima facie and learned Additional Commissioner and learned trial Judge seized of the suit shall decide the proceedings on the basis of the evidence on record and in accordance with law uninfluenced by the observations made herein. Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)