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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.4144 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO.4146 OF 2016

Charles V. Misquitta & Ors.	...Appellants
V/s.	
M/s.Neumec Venture & Ors.	...Respondents

Mr.Girish Godbole i/b Mr.Sumit Kothari for the Appellants.

Mr.Praveen Samdhani, Senior Counsel with Mr.Chetan Kapadia and Ms.Swapna Roopvate i/b Mr.Tushar Goradia for the Respondent No.1.

Mr.S.K. Sonawane for the Respondent No.2 & 3 – B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 1ST MARCH, 2016.

P.C. :-

1. By this appeal from order the appellants (original plaintiffs) have impugned the order dated 29th January, 2016 passed by the learned trial Judge dismissing the notice of motion filed by the appellants (original plaintiffs) by which the plaintiffs had applied for injunction restraining the defendants from carrying out any construction on the property bearing Survey no.26-A, Hissa No.5(part), corresponding to C.T.S. No.418/C/1, admeasuring 185.7 sq. mtrs. of village Vile Parle)East), Mumbai in pursuance to the

commencement certificate and for an injunction restraining the Municipal Corporation from granting any further permission for development of the suit property.

2. It is the case of the appellants (original plaintiffs) that Valentine Misquitta and Peter Misquitta were the owners of the larger suit property bearing Survey No.26-A, Hissa No.5 (part), C.T.S. No.418-C, 418-C (15 to 25). On 29th August, 1982, vide a deed of conveyance the said Valentine Misquitta and Peter Misquitta delivered and transferred 1713 sq. mtrs. out of C.T.S. no.418/C/1 in favour of M/s.D.N. Enterprises. It is the case of the appellants that 1528.7 was acquired by the Municipal Corporation for the purpose of play ground and was handed over to the Municipal Corporation by the transferee M/s.D.N. Enterprises. It is the case of the appellants that after deducting the said area, which was acquired by the Municipal Corporation, the only area remained with M/s.D.N. Enterprises was admeasuring 184.3 sq. mtrs. in C.T.S. No.418/6/1. It is the case of the appellants that since the said M/s.D.N. Enterprises was entitled to the area only of 184.3 sq. mtrs. in the property bearing C.T.S. No.418/C/15 to 418/C/25, the said M/s.D.N. Enterprises could not have conveyed 370 sq. mtrs. area vide deed of conveyance dated 19th September, 2009 in favour of the defendant no.1 herein.

3. According to the appellants (original plaintiffs), since the

said M/s.D.N. Enterprises could not have transferred the property admeasuring 370 sq. mtrs., the defendant no.1 could not have commenced any construction on the said property. The appellants accordingly filed a suit in the Bombay City Civil Court in the year January, 2015 *inter-alia* praying for a declaration that the conveyance deed dated 19th September, 2009 is illegal, bad in law and not binding upon them insofar as it relates to the suit property admeasuring 184.3 sq. mtrs of village Vile Parle bearing Survey No.26-A, Hissa No.5(part) of C.T.S. No.418/C/1 is concerned. The appellants have also applied for permanent injunction restraining the defendant no.1 from carrying out any construction on the said portion. The plaintiffs also filed a notice of motion *inter-alia* praying for an injunction in respect of the suit property. The notice of motion was resisted by the defendant no.1 by filing affidavit in reply. The learned trial Judge has dismissed the notice of motion by recording various reasons.

4. Mr.Godbole, learned counsel appearing for the appellants (original plaintiffs) invited my attention to the deed of conveyance of 1992 and of 2009 forming part of the record and would submit that after acquisition of substantial plot by the Municipal Corporation out of the area sold under conveyance by the deed of conveyance of 1992, the balance area could not have been 370 sq. mtrs. He submits that out of the said 370 sq. mtrs. the appellants became entitled to the

area admeasuring 185.7 sq. mtrs. The defendant no.1 however has commenced the construction on the entire 370 sq. mtrs which is inclusive of 185.7 sq. mtrs claimed by the plaintiffs.

5. It is submitted by learned counsel for the appellants that unless the defendant no.1 would have applied to the Corporation for demarcation of the suit property, in view of the fact that the defendant no.1 was entitled to only part of the area being constructed, the defendant no.1 could not have commenced construction on the suit plot.

6. My attention is also invited to the order passed by the District Deputy Land Record (DDLRL), according to which some portion of the plot was ordered to be recorded in the name of the defendant no.1 in respect of the land bearing C.T.S. No.418/C/1 and the name of the plaintiffs being recorded in respect of the area bearing C.T.S. NO.418/C/2. It is not in dispute that the order passed by the DDLRL has been impugned by the appellants before the higher authorities and the same is pending.

7. Mr.Samdhani, learned senior counsel appearing for the respondent no.1 on the other hand has invited my attention to the plans annexed to the deed of conveyance dated 29th August, 1992, which was executed between Valentine Misquitta and the legal heirs of Peter Misquitta and M/s.D.N. Enterprises. He submits that

according to the recital in the said deed of conveyance read with the plan annexed to the deed of conveyance, the said Valentine Misquitta and the legal heirs of Peter Misquitta had sold the entire property described in the said plan and the deed of conveyance and no area was left with the said Valentine Misquitta and the legal heirs of Peter Misquitta. He submits that since the entire property was transferred in favour of M/s.D.N. Enterprises and even after acquisition of the area of 1528.7 sq. mtrs. by the Municipal Corporation, the balance area was available with M/s.D.N. Enterprises which was rightly conveyed in favour of the defendant no.1 vide deed of conveyance dated 19th September, 2009. He submits that the plan annexed to the deed of conveyance stood incorporated in the said deed of conveyance which indicates that the entire property was sold by the predecessor-in-title of the appellants in favour of M/s.D.N. Enterprises and thereafter part thereof in favour of the defendant no.1 by the said M/s.D.N. Enterprises.

8. Learned senior counsel for the respondent no.1 relied upon the judgment of the Supreme Court in case of **K.S. Nanji & Co. vs. Jatashankar Dossa & Ors. AIR 1961 SC 1474** and in particular paragraph 9 thereof in support of his submission that once the plan is annexed to a document, such plan or map stands incorporated in the document of title and thus the Court is bound to consider the

boundaries shown in the plan without embarking upon an attempt to correct them with reference to the revenue records.

9. Learned senior counsel for the respondent no.1 also invited my attention to various *prima-facie* observations recorded by the learned trial Judge. He submits that after the deed of conveyance were executed in favour of his client by M/s.D.N. Enterprises, his client was not only the exclusive owner of the plot in question but also exclusive owner of 11 structures under the deed of conveyance. The defendant no.1 negotiated with those 11 tenants and have paid substantial amount. He submits that about more than Rs.4.00 crores are already spent by the defendant no.1 on the said plot. Those 11 tenants have been shifted to other premises and are waiting for the accommodation in the new construction. He submits that the appellants however have filed the suit only in the year 2015 and that also without disclosing any location, area or description of the suit property admeasuring 185.7 sq. mtrs.

10. Learned senior counsel invited my attention to various revenue entries annexed to the compilation of documents and would submit that even according to those documents, the possession was with the said M/s.D.N. Enterprises and were entitled to convey 370 sq. mtrs. area in favour of the defendant no.1.

11. It is submitted by learned senior counsel that the

appellants (original plaintiffs) have not applied for possession of the suit property and for declaration of the alleged ownership in respect of the suit property.

12. Mr. Godbole, learned counsel for the appellants in rejoinder reiterated his submissions and would submit that if ultimately it is held by the learned trial Judge that the plaintiffs are entitled to the suit property and if the conveyance executed by M/s.D.N. Enterprises in favour of the defendant no.1 is held illegal, the appellants (original plaintiffs) would not be able to get possession of the suit property and thus the impugned order passed by the learned trial Judge shall be interfered with by this Court.

13. A perusal of the plaint filed by the plaintiffs clearly indicates that the plaintiffs have not applied for any declaration of the ownership in respect of the suit property. The plaintiffs have also not applied for possession of the suit property. It is clear that the plaintiffs have also not sought any declaration in respect of the deed of conveyance dated 29th August, 1992 between Valentine Misquitta and the legal heirs of Peter Misquitta in favour of M/s.D.N. Enterprises. A perusal of the plaint also indicates that the plaintiffs have not disclosed any location and demarcation of the suit property.

14. With the assistance of the learned counsel for the parties, I have perused sketch plan annexed to the deed of conveyance dated

29th August, 1992 which describes the entire boundaries of the plot conveyed in favour of M/s.D.N. Enterprises. If the said plan is read with the recitals of the said conveyance dated 29th August, 1992, it prima-facie indicates that Valentine Misquitta and the legal heirs of Peter Misquitta had sold the entire property described in the said deed of conveyance as demarcated in the said plan. The Supreme Court in the case of **K.S. Nanji & Co. vs. Jatashankar Dossa & Ors.** (supra) has held that if a plan or map is annexed to a document of transfer, it stands incorporated in such document and the Court has to accept the boundaries shown in the plan and cannot correct those boundaries by considering the measurement shown in the revenue record. In my view, the judgment of the Supreme Court in the case of **K.S. Nanji & Co. vs. Jatashankar Dossa & Ors.** (supra) squarely applies to the present case. I am respectfully bound by the said judgment.

15. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the learned trial Judge has also taken cognizance of the fact that the entire area of the plaint was sold by the predecessor-in-title of the appellants in favour of M/s.D.N. Enterprises. The plaint was totally vague insofar as location and demarcation of the suit property is concerned.

16. There is no dispute that the plaintiffs have not challenged

the deed of conveyance dated 29th August, 1992. Since 1992 till 2014, the plaintiffs did not take any objection in respect of the said property which was initially transferred in favour of M/s.D.N. Enterprises and thereafter part of the property having been transferred in favour of the defendant no.1. The defendant no.1 has already acted upon the said deed of conveyance of 2009 and has settled with 11 tenants and has got the plan sanctioned. It is not in dispute that the defendant no.1 has already carried out construction to the extent of three floors. 11 tenants have already shifted to some other allotted premises. In my view, the learned trial Judge has considered all these aspects in great detail and has rendered the valid reasons while dismissing the notice of motion filed by the plaintiffs.

17. In my view even in absence of the demarcation and location mentioned in the plaint, the learned trial Judge could not have granted any interim relief in favour of the plaintiffs.

18. The balance of convenience is in favour of the defendant no.1 and not the plaintiffs. The plaintiffs did not make out any case for grant of interim relief before the learned trial Judge and also before this Court. The observations made by the learned trial Judge and by this Court are *prima-facie*.

19. The appeal from order is devoid of merits and is

accordingly dismissed.

20. In view of the dismissal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)