

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO.6038 OF 2016 with
CIVIL APPLICATION (ST) NO.6041 of 2016

Mrs.Anjali Arora w/o Pradeep Arora .. Appellant
vs
Smt.Vasudha B.Manseta & ors .. Respondents

Mr.Anand Mishra i/b Mr.Ashok Saraogi
for Appellant
Mr.Nitin Trivedi for Respondent no.1
Mr.S.P.Thorat for Respondent no.2

Coram: G.S.KULKARNI, J.
Date : 25th APRIL, 2016.

P. C.

Not on Board. Taken on Board.

1. By this appeal, the order dated 6th February 2016 passed by the learned Judge, City Civil Court at Mumbai in Notice of Motion No.43 of 2011 in S.C.Suit No.20 of 2011 is challenged by the appellant/original plaintiff. The appellant had sought a relief of temporary injunction against respondent-defendants from disturbing possession of the appellant in respect of the suit tenement. The learned trial Judge by the impugned order has dismissed the Notice of Motion. It is not disputed between the parties that there was a status-quo order which was operating from 2011 till disposal of the

Notice of motion by the impugned order dated 6th February, 2016. Further, by an order dated 11th March 2016 interim protection as granted by the trial Court was continued by this Court and the same is operating till date.

2. I have heard learned counsel for the contesting parties. The case of the appellant-plaintiff is that she is in possession of the premises on the basis of an agreement entered with her by one Mr.Sunil Deshpande. It is her case that Mr.Sunil Deshpande was transferee of these premises from the original allottee of MHADA namely Mr.Ketan Singh.

3. On the other hand, the case of the respondent no.1/defendant no.1 is that she is the lawful purchaser of these premises directly from the original allottee Mr.Ketan Singh under a valid agreement. It is submitted that the agreement of defendant no.1 was submitted in the year 1992 to the MHADA for its approval and the said approval application is till date pending decision of the MHADA. Learned counsel for the respondent no.1 has drawn my attention to a letter dated 29th July, 2010 which is at page ... of the

paper book, issued by the Chief Security Officer, MHADA indicating that on verification of the record, it is revealed that the documents which the appellant/plaintiff had submitted did not bear the signature of the original allottee Mr.Ketan Singh and therefore, there was a reason to believe that documents which were submitted by the appellant/plaintiff were bogus and fabricated. The said letter of MHADA records that in view of this position, the appellant/plaintiff was called upon to ensure the presence of Mr.Sunil Deshpande before the appropriate Competent Authority of the MHADA so as to verify the actual position. However the appellant/plaintiff did not comply with the said requirement. Learned counsel for respondent no.1 would submit that the documents which were submitted on behalf of the appellant/plaintiff are bogus and in that regard criminal proceedings have already been initiated by respondent no.1 before the criminal Court at Mumbai, and these proceedings are pending.

4. Having considered the rival submissions, it is quite clear that there are conflicting claims of the parties in respect of the suit tenement and also in regard to the fact as to whether the possession of the appellant/plaintiff is an authorized possession.

Admittedly, the tenement was allotted by respondent no.2/defendant no.2-MHADA to one Mr.Ketan Singh and none of the transfers either in favour of the appellant/plaintiff or respondent no.1/defendant no.1 can miss the attention and record of MHADA as any transfer of such tenement is required to be approved by MHADA on the basis of appropriate documents to be submitted by the party claiming a lawful transfer. The appellant-plaintiff however, has not shown any document/application placed for consideration of the MHADA for approval of the transfer in her favour. However, that is something which the appellant/plaintiff would argue on merits.

5. It appears that the learned trial Judge in passing the impugned order has not ensured the presence of MHADA and called upon MHADA to file an affidavit-in-reply in regard to the rival contentions before adjudicating on the notice of motion in question. The say of MHADA would become crucial in the peculiar facts of the case. Thus, having considered these facts, it would be proper that the impugned order dated 6th February 2016 is set aside and Notice of motion No.43 of 2011 is restored to the file of the trial Court to be decided afresh after a reply-affidavit has been filed to the Notice of

Motion on behalf of respondent/defendant no.2 MHADA.

6. Mr.Thorat learned counsel appearing for MHADA submits that MHADA will place on record of the trial Court its affidavit to the Notice of motion no.43 of 2011 within a period of eight weeks from today. The appellant/plaintiff and respondent/defendant no.1 are permitted to file their rejoinder within a period of two weeks thereafter. The learned trial Judge after taking into consideration the factual position as would appear on record and shall endeavour to dispose of Notice of motion No.43 of 2011 as expeditiously as possible.

7. In the meantime, interim protection granted by this Court shall continue to operate till disposal of Notice of motion No.43 of 2011.

8. It is clarified that all contentions of the parties on merits of the matter are kept open and the learned trial Judge shall decide the Notice of motion without being influenced by the impugned order.

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9. Appeal from order is accordingly disposed of in aforesaid terms. Civil Application (St) No.6041 of 2016 also do not survive and is disposed of accordingly. No order as to costs.

(G.S.KULKARNI, J)

