

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST.) NO.9717 OF 2016

Vasundhara Ashok Ghagare ... Applicant
Vs.
Rashid Mohamed Munna Khan ... Respondent

Mr. S. M. Oak i/b. Mr. Sagar A. Joshi for Applicant.
Mr. Ajay Rai for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 20TH APRIL, 2016

P.C. :

Heard Mr. Oak, learned Counsel for applicant and Mr. Rai learned Counsel for respondent at length. Leave to amend so as to pray for condoning the delay in filing C.R.A. is granted. Amendment shall be carried out forthwith.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant has challenged the judgment and order dated 31.01.2015 passed by the learned Joint Civil Judge, Junior Division, Thane below exhibits - 5 and 13 in Regular Civil Suit No.456 of 2014. By that order, the learned trial Judge rejected the application made by the applicant, hereinafter referred to as plaintiff, under Order 40, Rule 1 r/w. Section 151 and Order 39, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). The learned trial Judge allowed the application exhibit-13 made by the respondent, hereinafter referred to as 'defendant', claiming injunction against the plaintiff and the police restraining them from disturbing and / or obstructing his peaceful possession and enjoyment of flat No.6 on the 2nd floor in Matru Kripa Building, Dr. Moose Road, Near Gadkari Rangayatan, Thane (West) (for short

'suit premises').

3. Plaintiff has instituted Regular Civil Suit No.456 of 2014 under Section 6 of the Specific Relief Act, 1963 (for short 'Act') inter alia praying for passing decree to the effect that plaintiff is in use, occupation, possession and enjoyment of flat No.8 on the second floor in Matru Kripa Building situate at Dr. Moose Road, Near Gadkari Rangayatan, Thane; for appointment of Court Receiver with direction to open the lock and take the possession of flat No.8; and for interim reliefs.

4. During the pendency of the Suit, plaintiff took out application exhibit-5 under Order 40, Rule 1 read with Section 151 and Order 39, Rule 1 of C.P.C. inter alia praying for appointing Court Receiver with direction to open the lock of flat No.8; directing the Court Receiver to put the plaintiff in possession of flat No.8; for temporary injunction restraining the defendant from disturbing peaceful possession and enjoyment of the plaintiff in respect of flat No.8.

5. Defendant took out application exhibit-13 seeking injunction against the plaintiff restraining her from disturbing his peaceful possession over the suit premises, namely flat No.6. By the impugned order, the learned trial Judge dismissed the application exhibit-5 and allowed the application exhibit-13. Aggrieved by that decision, plaintiff preferred Miscellaneous Civil Appeal No.35 of 2015 before the learned Ad-hoc District Judge-2, Thane. By the judgment and order dated 04.04.2015, the learned District Judge partly allowed the Appeal and rejected the prayer made by the plaintiff for appointment of Court Receiver. The learned District Judge set aside the order below exhibit-13 and rejected that application. The learned District Judge directed the

trial Court to dispose of the suit expeditiously.

6. Aggrieved by that decision, defendant instituted Writ Petition No.5643 of 2015. In view of Section 6(3) of the Act, the Appeal instituted by the plaintiff before the learned District Judge itself was not maintainable. Writ Petition was allowed on 23.03.2016 and the order passed by the learned District Judge was set aside reserving liberty to the plaintiff to challenge the trial Court's order, if so advised. In pursuance thereof, plaintiff has instituted present C.R.A. on 31.03.2016 challenging the trial Court's order dated 31.01.2015. In view thereof, there is technical delay in filing the C.R.A. Hence, the same is condoned.

7. Mr. Oak strenuously contended that the plaintiff is in settled possession of flat No.8 situate on the second floor. He invited my attention to the electricity bills issued by Maharashtra State Electricity Distribution Company Limited (for short 'MSEDCL') for the month of January 2014, February 2014 and March 2014. In all these bills, address of the plaintiff is shown as flat No.8, Matru Kripa Building. He also invited my attention to the order dated 19.04.2014 passed by the Special Executive Magistrate, Naupada Division, District Thane in proceedings under Section 145 of the Code of Criminal Procedure, 1973. He submitted that defendant claims to have purchased the suit premises from Ashok K. Ghagare, husband of the plaintiff. Under the garb of obtaining possession of flat No.6, namely, suit premises, defendant with the help of three or four persons forcibly entered into flat No.8. He submitted that in fact plaintiff is in settled possession of flat No.8 and therefore, defendant cannot enter flat No.8.

8. Mr. Oak invited my attention to the sanctioned plan as also

agreement of sale dated 29.01.2014 executed by Ashok Ghagare in favour of defendant. He submitted that the said agreement records that consideration of Rs.31 lacs was paid by cheque No.001236 dated 20.02.2016 drawn on Bank of India. However, that cheque is cancelled. In other words, payment of Rs.31 lacs was not made by that cheque. Amount of Rs.15 lacs was paid on 22.02.2014 through cheques No.001343 and 001344. Payment of Rs.14,70,000/- was made by cheque No.CQ2268895 on 12.04.2014. He submitted that the payment dated 12.04.2014 was made after the plaintiff made complaint. The payments were made by M/s. Vicky Motors. M/s. Vicky Motors is a total stranger and the agreement was not entered into by plaintiff's husband with M/s. Vicky Motors. The alleged payment is, therefore, not towards consideration of the suit premises. He submitted that as the suit premises is under the control of Special Executive Magistrate (S.E.M.), the same order may be continued pending the disposal of the Suit. Mr. Oak further submitted that paragraph 2 of the Agreement of Sale refers to Deed of Settlement dated 07.10.2010 executed among the children of Krishnaji Vinayak Ghagare. However, defendant has not produced the said Deed of Settlement.

9. On the other hand, Mr. Rai supported the impugned order. He submitted that by the registered Agreement for Sale dated 29.01.2014, plaintiff's husband agreed to sell suit premises to the defendant. Defendant is a proprietor of M/s. Vicky Motors. He submitted that defendant has paid entire consideration of Rs.31 lacs to the husband of the plaintiff. He further submitted that the Deed of Settlement dated 29.08.1983 among the children of Krishnaji Ghagare was produced in the trial Court by the defendant and not by the plaintiff. He further submitted that in fact the plaintiff has given no objection for selling the suit premises to the defendant. He submitted that plaintiff has also

instituted Regular Civil Suit No.560 of 2014 for declaration that the Agreement of Sale dated 29.01.2014 executed by her husband in favour of the defendant is illegal, and as such, is liable to be cancelled. He invited my attention to paragraphs 9 to 11 of the impugned order and submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. After considering the material on record, it is evident that plaintiff's husband Ashok Ghagare had executed Agreement for Sale on 29.01.2014 whereunder he agreed to sell suit premises to the defendant. Prima facie, plaintiff has also given no objection for the said transaction. It also prima facie appears that defendant has paid entire consideration of Rs.31 lacs to the husband of the plaintiff. Defendant has also produced affidavit of Mr. Ashok Ghagare wherein he reiterated that he was owner and in possession of the suit premises. The learned trial Judge, after considering the material on record, observed that the documents produced by the plaintiff are in respect of the flat No.8. These documents, prima facie, do not support plaintiff's contention that she is in possession of flat No.6, namely suit premises. The suit premises stands in the name of Ashok Ghagare. He agreed to sell the same to the defendant for consideration of Rs.31 lacs, which has been received by him. After considering the material on record, the learned trial Judge rejected the application exhibit-5 and allowed the application exhibit-13. Perusal of the order dated 19.04.2014 passed by the S.E.M. though undoubtedly records that defendant has entered flat No.8, Mr. Rai makes a categorical statement that defendant is in possession of the suit premises, namely, flat No.6 in pursuance of the Agreement of Sale. Perusal of order dated 19.04.2014 shows that the S.E.M. has

treated flat No.6 as the property in dispute and directed plaintiff and defendant not to enter flat No.6. In other words, S.E.M. did not pass any order in respect of flat No.8. Perusal of the plaint in the present case also shows that plaintiff is claiming relief qua flat No.8 and not flat No.6, namely the suit premises. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Application fails and the same is dismissed.

11. Parties are at liberty to apply to the trial Court for expeditious disposal of the Suit. If such application is made, the learned trial Judge will pass appropriate order. Mr. Oak states that plaintiff will not create third party interest in respect of flat No.8 situate on the second floor. Mr. Rai also states that defendant will not create third party interest in respect of the suit premises, namely, flat No.6 situate on the second floor. Statements made by the learned Counsel for respective parties, on instructions, are recorded.

(R. G. KETKAR, J.)

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