

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.433 OF 2014
WITH
CIVIL APPLICATION NO.657 OF 2014**

Santosh Madhukar Sandav

..Appellant

Vs.

Krishnamant Sakharam Sandav

..Respondent

Mr. J. M. Puranik for the Appellant /Applicant

Mr. Prashant Bhavake for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 13th JULY, 2016

P.C.

1 The above Appeal From Order takes exception to the order dated 26-2-2014 passed by the Learned Judge of the Bombay City Civil Court, Greater Mumbai, by which order the Notice of Motion No.1760 of 2012 filed by the Appellant original Plaintiff came to be dismissed.

2 The bone of contention in the Suit is a residential Room being No.3, Yasho Niwas, J.M. Road, Bhandul (W) Mumbai 400 078. It is the case of the Plaintiff that his father acquired rights in respect of various chawls constructed in Survey No.137(p) i.e. situated at Village Kanjur and became absolute owner of the same and his father also constructed a chawl named as Yashoniwas and permitted his parents to use and occupy the Room No.3 of said Yashoniwas and therefore the Defendant who is the uncle of the Plaintiff

started residing there. It is the case of the Plaintiff that his father had permitted the Defendant to use and occupy the said Room No.3 only till his father was alive. It is further the case of the Plaintiff that considering the manner in which the Defendant was conducting himself, his father had issued a legal notice dated 3-8-2009 asking the Defendant to vacate the premises and therefore had filed a Suit in the Bombay City Civil Court being S.C. Suit No.2205 of 2009. The Plaintiff also lays a claim to the properties on the basis of writing executed in his favour by his father. The Defendant filed his reply and disputed the claim of the Plaintiff. The Defendant adverted to the earlier Suit filed by the father of the Plaintiff wherein the Notice of Motion filed by his father came to be rejected and thereafter the Suit itself came to be withdrawn by the father. The Defendant adverted to the findings recorded by the Court in the said proceedings which findings were to the effect that the Plaintiff i.e. the present Plaintiff's father in the said Suit had no concern with the suit property and that he has not produced any document to show his ownership of the suit property. In the instant Notice of Motion the Plaintiff had sought the relief that the Defendant should be restrained by an order of injunction from creating any third party rights in the suit property i.e. residential Room No.3, Yashoniwas, J. M. Road, Bhandup (W) Mumbai 400 078. The second relief sought in the Notice of Motion was for a mandatory order directing the Defendant to disclose the details / particulars of the nature of the third party right created by him. The third relief was sought on the basis that the Defendant had

already inducted a person by name Gujar in the suit property.

3 The Trial Court considered the instant Notice of Motion and has by the impugned order dated 26-2-2014 dismissed the same. The gist of the reasoning of the Trial Court revolves around the earlier adjudication of Notice of Motion No.1966 of 2009 filed by the father of the Plaintiff in the Suit filed by him being S. C. Suit No.2205 of 2009. The Trial Court observed that the subject matter of the said Suit was also Room No.3 and that whilst rejecting the said Notice of Motion the Learned Judge of the City Civil Court had observed to the following effect :

“There is nothing with the plaintiff to show his ownership about the suit premises and plaintiff himself is not sure as to from whom he purchased the suit premises”.

4 The Trial Court also adverted to the observations made by the Learned Judge which were to the effect that the Plaintiff had suppressed material facts and has pleaded that he purchased the suit plot from one Shivram Singh but later on changed his stand and contended that the name of the erstwhile owner was Ramkalidevi. The Trial Court observed that it is for the Plaintiff to establish his ownership and lawful rights in respect of the suit premises. The Trial Court lastly observed that though the Plaintiff is claiming his right, title and interest through his father in view of the alleged Registered

Will executed in his favour, a person cannot pass on a title which he does not have.

5 In my view, having regard to the facts as aforestated namely having regard to the fact that the Notice of Motion filed by the father of the Plaintiff for the identical reliefs in a Suit filed by him in respect of the same suit property and since the father of the Plaintiff through whom the Plaintiff claims did not produce any documents to show his ownership in respect of the suit property, the impugned order passed by the Trial Court cannot be faulted with. No case for interference is therefore made out, the Appeal From Order is accordingly dismissed.

6 In view of the dismissal of the above Appeal From Order, the Civil Application No.657 of 2014, does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]