IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.649 OF 2016
IN
NOTICE OF MOTION NO.55 OF 2015
IN
S.C. SUIT NO.2585 OF 2014

Mr Rajdev Gangaram Jaiswal … Applicant
v/s
Laxmi w/o. Suresh Gupta … Respondent

Mr Ashok M. Saraogi for Applicant.
Mr Anand H. Singh for Respondent.
Mr V.S. Panandikar, Assistant Court Receiver present.

CORAM : R. G. KETKAR, J.
DATE : 23rd NOVEMBER, 2016.

<u>P.C.</u> :-

1. Heard Mr. Saraogi, learned Counsel for applicant, Mr.Singh, learned Counsel for respondents and Mr Panandikar, Assistant Court Receiver.

2. By this Application filed under Section 115 of Civil Procedure Code 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as the 'original defendant', has challenged the judgment and order dated 23rd September 2016 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai in Notice of Motion No.55 of 2015

in S.C. Suit No.2585 of 2014. By that order, the learned Trial Judge allowed the Notice of Motion taken out by the respondent, hereinafter referred to as the 'plaintiff', in terms of prayers prayer clauses (a) and (b) and appointed the Court Receiver, High Court, Mumbai as Receiver of Flat No.510 admeasuring 225 sq.ft. carpet area, Shree Samrat SRA CHS Ltd., Off Village Kolekalyan, Taluka Andheri, Manipada Village Road, Opp. Vidyanagari, Kalina, Santacruz (East), Mumbai 400 098 (for short 'suit premises) and to take physical possession of the suit premises and handover the same to the plaintiff, as the agent of the Court Receiver without account and payment of remuneration. The learned Trial Judge also issued injunction restraining the defendant, his agents, servants, family members, representatives or any person claiming by or under them in any manner selling, transferring, assigning and/or creating any charge, lien, hypothecation of the suit premises or any part thereof.

3. The Suit is instituted by the plaintiff under Section 6 of the Specific Relief Act, 1963 (for short 'Act') wherein the plaintiff has come with the case that she is the owner and the defendant is a trespasser in the suit premises from 1st September 2014.

4. In paragraph 2 of the plaint, plaintiff contended that she is the owner and was in legal and physical possession of the suit premises and is using the same for residential purpose although it was allotted in the name of Ramesh D. Revade alias Barot. He was held eligible under the Slum Rehabilitation Scheme at serial No.5 of Annexure II and in respect of the old structure at Anthony Machado Chawl which was occupied by Mrs. Kantaben D. Barot alias Revade, her sons Ramesh and Manoj. Plaintiff has referred to various chequer payments as also agreement of sale dated 20.06.2007 executed by Kantaben Barot in her favour. Defendant is one of the witnesses to the agreement. Plaintiff also referred to other documents executed by Kantaben and others.

5. In paragraph 3 of the plaint, plaintiff has alleged that the defendant has never purchased the structure in Anthony Machado Chawl and the suit premises and making false claim on the basis of forged and fabricated documents. Defendant was part of the family of Shakuntala Gangaram Jaiswal, who was alloted flat No.511 adjacent to suit premises i.e. flat No.510. Defendant is staying in flat No.511 since May, 2011 when flat No.511 was allotted to Shakuntala Gangaram Jaiswal and he has been staying there until 1st September

2014 when the defendant forcibly and illegally trespassed in the suit premises without the consent and written permission of the plaintiff.

6. In paragraph 4 of the plaint, plaintiff has asserted that she is in legal and physical possession of the suit premises since 10th June 2011. In paragraph 10 of the plaint, plaintiff has stated that on 1st September 2014, defendant and his wife forcibly trespassed in the suit premises and are in illegal possession of the suit premises and are not allowing the plaintiff to stay therein though she is in legal and physical possession of the suit premises.

7. Plaintiff has inter alia prayed for declaration that defendant is a trespasser in respect of the suit premises and that he has no right, title or interest in the suit premises and accordingly be directed to be removed from the suit premises and to handover possession of the suit premises to the plaintiff; for declaration that the plaintiff is the owner of the suit premises and has been residing in the suit premises since 10.06.2011 and the defendant or any person claiming through him has no right, title and interest or can claim possessory right in the suit premises; for mandatory order of appointment of Court Receiver, High Court, Mumbai as Receiver of the suit premises with all powers

under Order XL, Rule 1 of C.P.C. and to take physical possession of the suit premises and to handover the physical possession of the suit premises to the plaintiff as agent of the Court Receiver without account and payment of renumeration; for mandatory order restraining the defendant, his agents, servants, family members, representatives or any person claiming by or under him in any manner from selling, transferring, assigning and / or creating any charge, lien, hypothecation of the suit premises or any part thereof among other prayers.

8. In support of this appliaction, Mr Saraogi submitted that as the Suit is instituted under Section 6 of the Specific relief Act, plaintiff must establish ingredients of that Section viz. she was in possession of the suit premises and was dispossessed without her consent otherwise than following due process of law and that the Suit is brought within six months from the date of dispossession.

9. He submitted that Ramesh Revade was found eligible for allotment as per Annexure II. plaintiff claims that one Ms Kantaben Durlabhai Barot agreed to sell the suit premises to the plaintiff by executing Agreement for Sale on 20th June 2007. The recital therein

records that Kantaben – vendor is the owner and is in use, possession and occupation of the suit premises viz. Flat No.510, Shree Samrat SRA CHS Ltd., Off Village Kolekalyan, Taluka Andheri, Manipada Village Road, Opp. Vidyanagari, Kalina, Santacruz (East), Mumbai 400 098 and that M/s K.K. Krishnan Construction Co.Pvt.Ltd. agreed to provide a flat admeasuring 225 sq.ft. carpet area at the same locality in view of her room. He invited my attention to the receipt at the foot of the said agreement which bears two revenue stamp receipts. As far as first receipt is concerned, that is signed by a person who is not a party to the agreement and the other one is signed by Kantaben Durlabhai Barot acknowledging receipt of Rs.8,50,000/-.

10. Mr. Saraogi has invited my attention to the affidavit dated 20th June 2007 made by Kantaben Barot. The said affidavit is notarized by A. P. Maroo, Notary. It does not bear serial number and registration number of notary register. First page of that affidavit also bears photograph of Ramesh Durlabhai Barot. Ramesh Barot has put his signature in Gujarati on that photograph as 'Ramesh Durlabhai Barot'. Kantaben Durlabhai Barot executed irrevocable general power of attorney appointing plaintiff as her lawful attorney. First page of that Power of Attorney bears photograph of Ramesh Barot. He has

has put his signature in Gujarati on that photograph as 'Ramesh Durlabhai Barot'. Mr. Saraogi submitted that sons of Kantaben by name, Manoj, Ramesh and Jagdish executed Affidavit cum N.O.C. Second page of that Affidavit cum N.O.C. bears photograph of Ramesh D. Barot. He has put his signature in Gujarati on that photograph as 'Ramesh Durlabhai Barot'. On the third page, he has merely signed as 'Ramesh'. Mr. Saraogi submitted that Ramesh Revade has purportedly made affidavit stating therein that he did not execute any document in favour of defendant and his brother Vasudev. If any document bears his signature, he is not responsible for the same. In the year 2007, he along with his brothers had sold room in Anthony Chawl to the plaintiff. He admitted that defendant and his brother forced him to sign some documents. However, he will not sign those documents. He has signed as 'Ramesh' in Hindi/Marathi followed by alphabet 'B'. He submitted that as the signatures of Remesh Revade on different documents do not match as also the affidavit, irrevocable general power of attorney and other documents do not bear serial number, registration number of notary register, these documents are not reliable. No credence can be given to these documents. In some of the documents, Ramesh Revade has signed in Gujarati whereas the affidavit-cum-N.O.C. As also the affidavit is signed by Ramesh Barot as 'Ramesh' or 'Ramesh B.' either in Hindi or Marathi.

11. Mr. Saraogi further submitted that though the second receipt at the footnote of the agreement dated 20th June 2007 shows that Kantaben acknowledged receipt of consideration of Rs.8,50,000/-. Kantaben thereafter executed document acknowledging receipt of Rs.8,50,000/- as late as on 23rd May 2011. There was no occasion for Kantaben to issue such receipt in 2011 once having received entire consideration in 2007 itself. Mr. Saraogi, therefore, submitted that prima facie these documents are forged and fabricated documents and do not substantiate claim of the plaintiff that she has purchased the suit property and that she is in possession thereof since 2011. He submitted that defendant is paying electricity bills and the original bills are in the custody of the defendant. The electricity bill is at page 137. Though the electricity bill at page 137 is in the name of Ramesh Revade, defendant is paying the electricity bills. He further submitted that Rajdev Jaiswal had lodged F.I.R. No.459 of 2014 on 1st September 2014. Perusal of the statement recorded on 1st September 2014 clearly shows that the plaintiff

admitted that the defendant is in possession of the suit premises. He, therefore, submitted that the learned trial Judge was not justified in passing the impugned order of appointment of Court Receiver and directing the defendant to handover possession of the suit premises to the plaintiff at interlocutory stage.

12. On the other hand, Mr Anand Singh supported the impugned order. He submitted that the learned Trial Judge has considered several circumstances and more particularly the order passed by the learned Sessions Judge in Anticipatory Bail Application No.2150 of 2014. By order dated 3rd March 2015, the learned Sessions Judge rejected the Anticipatory Bail Application of the defendant. He has taken me through that order. He submitted that no case is made out by the Applicant and the Revision Application should be dismissed with costs.

13. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, Mr Ramesh D. Revade @ Barot was found eligible as per Annexure II. On 12th March 2006, M/s. K. K. Constructions Co. Pvt. Ltd. entered into agreement with (1)

Kantaben D. Barot; (2) Ramesh D. Revade and (3) Manoj D. Barot. By that agreement, developer agreed to provide flat admeasuring 225 sq. ft. (carpet) in the same locality in lieu of room No.2, Radheshyam Chawl, Room No.2, Vakola Bridge, Dhobighat, Santacruz (East) Mumbai-400 055. Defendant is relying upon the Agreement for Sale executed by Ramesh Revade in his favour on 30th January 2005. Thus, Ramesh D. Revade executed agreement for sale dated 30th January 2005 even before the developer executed agreement on 12th March 2006. Apart from this agreement for sale, defendant is also relying upon another agreement for sale executed by Ramesh Revade in his favour on 11th July 2014. If at all, Ramesh Revade had already executed Agreement for Sale in his favour on 30th January 2005, there is no explanation as to why subsequent agreement for Sale was executed by Ramesh Revade in favour of the defendant in the year 2014. Mr Saraogi submitted that the agreement of 2014 confirms the earlier transaction between the parties. It is not possible to accept this submission. Perusal of the agreement dated 11th September 2014 does not even remotely refer to the earlier Agreement dated 30th January 2005. It is also material to note that defendant claims to have paid Rs.8,50,000/- in cash in pursuance of the said agreement.

plaintiff has contended that agreement for sale dated 30th January 2005, affidavit, irrevocable power of attorney are forged and fabricated by the defendant and the same are ante-dated. plaintiff has relied upon letter dated 14th August 2014 of Reliance Infrastructure Limited addressed to the Senior Inspector of Police, Vakola Police Station. All the documents submitted by the defendant for change of name in electricity meter referred to the agreement for sale and affidavit dated 11th July 2014. However, the agreement for sale dated 30th January 2005 was not mentioned. On 3rd March, 2013, Government of India issued Aadhar Card to the defendant on the basis of the documents submitted. Aadhar Card shows address of flat No.511 and not suit premises which is flat No.510. Birth Certificate of Ms Riya, daughter of defendant issued by Mumbai Municipal Corporation on 20th November 2014 shows that she was born on 17th August 2011. Defendant's permanent address is shown as flat No.511. It is also interesting to note that defendant is witness in agreement of sale dated 20th June 2007 executed in favour of the plaintiff. Prima facie, all these circumstances indicate that the agreement for sale dated 30th January 2005 is ante-dated.

14. While passing the impugned order, the learned trial Judge

has considered several circumstances. The learned trial Judge has considered the statement dated 8th August 2014 made by Ramesh Revade before Vakola Police Station. He stated that he did not sell old structure in Anthony Machhado Chawl to the defendant. He sold the said room to the plaintiff. The learned trial Judge also considered the order dated 3rd March 2015 passed by the learned Additional Sessions Judge rejecting the anticipatory bail application filed by the defendant. In paragraph 7 of that order, the learned Sessions Judge referred to the statement of Ramesh Barot recorded by the Investigating Officer. He stated that the room was sold to the plaintiff for consideration of Rs.8,50,000/- and the possession was also given to the plaintiff. He further stated that he did not sell the suit property to anybody else except the plaintiff. The learned Sessions Judge also considered the supplementary statement of Ramesh Revade to the effect that the Agreement for Sale and Affidavit allegedly executed by him are forged and fabricated documents and they do not bear his signature. Even the Secretary of Shree Samrat SRA CHS Ltd. gave a statement to the Police to the effect that she had never issued No Objection Certificate on the letter-head of the Society and it was a forged document. It was never issued by the Society and the same does not bear her signature. She has no concern with the dispute between the plaintiff and the defendant. The learned Sessions Judge observed that the Secretary of the Society is an independent person.

15. In the light of the aforesaid discussion, I do not find that the learned trial Judge committed any error in passing the impugned order. Hence, Revision Application fails and the same is dismissed.

16. At this stage, Mr Saraogi orally applies for stay of the order for six weeks. Mr Anand Singh opposes this request on the ground that defendant has produced forged and fabricated documents and therefore, no case is made out for staying this order. For the reasons recorded earlier, no case is made out for grant of stay to this order. Hence, oral application made by Mr Saraogi is rejected.

(R. G. KETKAR, J.)