

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER (L) NO.31983 OF 2016

The Sind Cosmopolitan Education Society ...Appellant
vs.
Mr. Manjit Singh Jodh Singh Abrol ...Respondent

Mr. S. A. Shetty a/w Mr. Ravindra K. Shetty for the Appellant.
Ms. Deepa Pohuja for the Respondent.

**CORAM: G.S.KULKARNI, J.
DATE: 28th NOVEMBER, 2016.**

P.C.:-

. Heard learned counsel for the parties.

2. By this appeal the Appellant/Plaintiff challenges the order dated 12/11/2016 passed by the learned Judge, City Civil Court at Bombay in Draft Notice of Motion in Suit No.2580/2016.

3. The Appellant/Plaintiff has filed Suit No.2580/2016 for praying permanent injunction against the respondent from entering the suit premises viz. CTS No.315 situated at Maroli Church, Mahul Road, Mumbai-400 074. The case of the Appellant/Plaintiff is that it is a Public Trust registered under the Bombay Public Trust Act, 1950 and that prior to the registration as Public Trust, the Appellant/Plaintiff was registered under the Society Registration Act On 25/6/1950. The Appellant/Plaintiff is running a school which is registered as a minority institution and is granted aid by the State Government. The School being conducted is up to 12th standard and about 2000 students coming from poor sections of the society are receiving education. The property in question on which the school is

situated was initially belonging to one Mrs. Pushpavati Lichiram Matta, who had created monthly tenancy in favour of the Appellant/Plaintiff society.

4. Mrs. Pushpawati Matta expired on 1/9/2003 . The case of the Appellant/Plaintiff is that the Respondent claims that some of the legal heirs of said Mrs. Pushpawati have transferred their 2/3rd undivided share in favour of the Respondent/Defendant by a Deed of conveyance dated 10/5/2016. The Deed of Conveyance in the schedule admittedly refers that 2/3rd undivided share in the property has been conveyed as described in the first paragraph of the schedule. The Appellant/Plaintiff states that on the basis of this Deed of conveyance, the Respondent/Defendant has started asserting possessory rights in respect of the school without following the procedure known to law and the Respondent is attempting and resorting to take forcible actions. The Appellant/Plaintiff therefore approached the Basant Park Police Station with a complaint dated 31/10/2016 pointing out that the Respondent/Defendant is trespassing on the school property. It is complained that the Respondent/Defendant entered the school premises with goons, when the school was closed for Diwali vacation claiming that he has purchased the school property and intends to perform *bhoomi puja* on the school premises. It is recorded that the Respondent/Defendant threatened the two sub-staff residing in the school premises and then broke open the school entrance gate, principal's office, school office and put a new lock in the office and displayed board that the property belong to him. It is contended that the Respondent/Defendant also deployed 25 guards at the school premises who were present during the night hours. It is further

contended that the Respondent/Defendant had caused severe threat to the lady staff who were working for the school. However no action was taken on the said complaint.

6. Thus the contention as urged on behalf of the Appellant/Plaintiff before the Trial Court as also in this Appeal is that only on the basis of Deed of Conveyance which only confer 2/3rd undivided share on the Respondent/Defendant the Respondent /Defendant cannot resort to take possession of the school premises and threaten the peaceful running of the school. It is submitted that this is not a lawful course of action. If at all the Respondent/Defendant intends to assert any legal right in respect of the school property then a procedure known to law to evict the Plaintiff School is required to be followed when admittedly, the school is being conducted since last 65 years. It is submitted that all these basic facts are completely ignored by the learned Trial Judge in passing the impugned ad-interim order.

7. On the other hand learned counsel for the Respondent does not dispute that the Respondent has asserted his rights under the Deed of conveyance dated 10/5/2016 by which 2/3rd undivided share in the property has been said to be purchased by the Respondent/Defendant. It is contended that the suit itself was not maintainable as it was filed by the Chairman of the Public Trust and without a valid resolution of the Trust. It is next contended on behalf of the Respondent that the Deed of Conveyance is entered after objections were invited by a public notice . It is submitted that the property card is also amended and the name of the Respondent has been incorporated. It is further submitted that the objections in that

regard before the said Authority were raised and thereafter name of the Respondent/Defendant was entered and that there are further proceedings pending in that regard.

8. Having considered the rival submissions in my opinion this is a fit case where the learned Trial Judge ought to have granted an ad-interim injunction. Admittedly, the Appellant/Plaintiff has approached the Trial Court in the Suit in question seeking injunctory relief so as to prevent alleged unlawful interference by the Respondent/Defendant. The suit has been filed in the interest of 2000 students who are on the campus and in the interest of the property and persons who are connected with the school. There is also no dispute that the school in question is in existence since last about 65 years. There is no dispute that the original owner was fully aware about the nature of the interest in the property which was created in the favour of the school. Furthermore the school is an aided school receiving aid from the Government of Maharashtra. If this be the position, then in my opinion it was not proper or permissible in law for the Respondent/Defendant to take such forcible actions threatening to take possession of the school premises and obstructing the smooth running of the school, only on the basis of Deed of Conveyance which confers on him only a $2/3^{\text{rd}}$ undivided share which surely is not definite under the Deed of Conveyance as sought to be relied upon and the undivided share can become final only after a partition. Admittedly, the remaining $1/3^{\text{rd}}$ share of one of the legal heir of the original owner remains undisturbed and until the respective shares are partitioned the character of the property remains to be an undivided property. In such a situation, when admittedly the physical possession of the property is with the

Appellant/Plaintiff, such coercive and forcible means to interfere in the valuable rights which the Appellant/Plaintiff is enjoying in conducting the school, is unknown to law. Appropriate recourse to law and procedure known to law is required to be followed by the Respondent/Defendant to assert any right which the Respondent/Defendant claims to have acquired under the said Deed of Conveyance. The legal rights of the Appellants/Plaintiff to possess the school premises and conduct the school cannot be usurped and/or sought to be extinguished by such forcible methods. The actions of the Respondent/Defendant which are complained by the Appellant/Plaintiff are serious and prima facie show interference in the running of the school. Even if the Respondent/Defendant contends to have acquired interest as a trustee on the basis of the said Deed of conveyance, even in that case prima facie in the capacity of a trustee such rights to take forcible control or possession of the school premises cannot be exercised by the Respondent/Defendant. In the circumstances, the Appellant/Plaintiff is entitled to ad-interim reliefs in the pending Notice of Motion. On the prima facie observations as made above, there shall be an ad-interim order in terms of prayer clause (a) of the Notice of Motion which reads thus:

“(a) That the Defendant his servants and agents be permanently restrained by an Order and injunction of this Hon'ble Court from entering the suit premises in CTS No.315 wherein school building at address Maroli Church, Mahul Rd. Mumbai-400 074 or any part thereof.”

9. The above ad-interim order shall operate till the Notice of Motion/Injunction application is heard and finally decided by the learned Trial Judge and for a further period of four weeks, if an order adverse to the Appellant/Plaintiff is passed in the Notice of Motion. Appeal from Order is disposed of in the above terms. No

costs.

10. Needless to observe that the Notice of Motion be heard by the learned Trial Judge on its own merits without being influenced by the observations as made in the impugned order and as also in this order. It is further clarified that the Respondent/Defendant shall forthwith remove the persons/guards, if any deployed on the school premises.

(G.S.KULKARNI, J.)