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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO.13 OF 2016

IN

NOTICE OF MOTION (L) NO.2069 OF 2013

IN

SUIT NO.155 OF 2014

WITH

NOTICE OF MOTION (L) NO.2069 OF 2013

IN

SUIT NO.155 OF 2014

Ramesh Maganlal Merchant

...Petitioner
/Ori. Defendant No.8.

In the matter of

Abdulla Nurulla Merchant

...Plaintiff

vs

Vithalbhai Narayan Merchant And 10 Ors.

...Defendants

.....

Mr. Swapan Samdani, i/b. G.S. Manasawala, for the Petitioner/Original Defendant No.88.

Mrs. A.R. Lambay, a/w. Mr. Vikas Singh and Ms. Sonali Sabale, i/b. Lambay & Co., for the Respondent/Original Plaintiff.

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CORAM : S.C. GUPTE, J.

DATED : DECEMBER 7, 2016

P.C. :

. The Review Petition is filed in respect of an interim order passed in a Notice of Motion taken out by the Original Plaintiff in a specific performance suit. The original Plaintiff is an agreement purchaser of the suit property, having agreed to purchase the same from

Defendant No.11, who, in turn, agreed to purchase the same from the owners of the suit property, namely, Defendant Nos. 1 to 10/their predecessors-in-title. This Court came to a conclusion that *prima facie*, the Plaintiff's entitlement to claim specific performance of the agreement appears to be established. So also insofar as the possession of the suit property is concerned, this Court came to a conclusion that *prima facie* the Plaintiff has been in juridical possession of the suit property, whereas the physical possession of the property was in possession of tenants/occupants of the suit property, whose tenancies are shown to have been attorned to the Plaintiff as the landlord. On this Review Petition, this Court agreed to review the order on the ground that the deed of confirmation, along with the agreement for sale, which is claimed to have been lodged for registration and subsequently registered with the Sub-Registrar of Assurances and, on the basis of which the present suit is filed, was a mere declaration unilaterally filed by the Plaintiff himself and that this fact was not brought to the notice of the Court or considered by it whilst passing of the order sought to be reviewed.

2. At the hearing of the Review Petition, it is pointed out by the Review Petitioner (Original Defendant No.8) that what is styled as deed of confirmation and registered with the Sub-Registrar of Assurances is merely a declaration unilaterally made by Defendant No.11 through its partner, i.e. the Plaintiff himself. Defendant No.11 and through him the Plaintiff claim to be the purchasers of the suit property. Their unilateral declaration, Counsel submits, does not confer any right with respect to the suit property.

3. The question to be considered here is whether the Plaintiff can be said to have established his *prima facie* entitlement for specific performance on the basis of a unilateral declaration and in the face of the fact that the agreement for sale in favour of his predecessor-in-title (Defendant No.11) is an unregistered document. Any unregistered document, under the proviso to Section 49 of the Registration Act, 1908, can be received as evidence in a specific performance suit under Chapter II of the Specific Relief Act, 1877. It may be that as a result of non-registration of such document the party's case may get weakened or less believable, but that does not mean that the party cannot rely on such unregistered document. If the circumstances of the case indicate that the document was in fact executed, there is nothing to prevent the parties from claiming rights and liabilities thereunder. For our purposes, in the present case, if the Court finds that there was in fact an agreement for sale between the parties, namely, the original owners (Defendant Nos. 1 to 10/their predecessors) and Defendant No.11, in pursuance of which the purchaser was put in possession of the property and that agreement was partly performed, there could still be a case for specific performance or, at any rate, right to possession under Section 53A of the Transfer of Property Act. In order to consider the Plaintiff's prayer for interim relief pending disposal of his suit, what this Court has to consider is whether the Plaintiff has a *prima facie* case to go to trial and whether pending determination of such case, the property needs to be protected. As this Court has observed in its order under review, there is a good case to go to trial and the Plaintiff is *prima facie* found to be in juridical possession of the suit property, the tenant/occupants in

physical possession of the property having attorned their tenancy to him as their landlord. In the premises and considering the balance of convenience, which is clearly in favour of the Plaintiff, the Defendants could not be permitted to change the status-quo in respect of the suit property, pending hearing and final disposal of the suit. In the premises, the injunction must follow.

4. Accordingly, there is no need to change the order passed by this Court, which is under review. The Plaintiff, anyway, is entitled to an interlocutory injunction in terms of prayer clause (a). The Review Petition is, accordingly, dismissed.

5. It is clarified that the observations made in this order are on a *prima facie* consideration and made only with a view to determine the Review Petition in the context of the order passed in the Plaintiff's Notice of Motion. These observations shall not in any way prejudice the application for rejection of plaint taken out by Defendant No.8 under Order 7 of Rule 11 of the Code of Civil Procedure, 1908.

(S.C. GUPTE, J.)