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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.634 OF 2012 IN
CHAMBER SUMMONS NO.1664 OF 2011 IN
EXECUTION APPLICATION ST.NO.1432 OF 2011 IN
NOTICE OF MOTION NO.2009 OF 2010 IN
SUIT NO.4110 OF 1995

Bijendra Singh Kailash Singh ...Appellant
vs.
M/s.Tainwala Builders and
Developers & Ors. ...Respondents

Mr.Rajiv Narula i/b Mr.V.S.Bhorge for the appellant
Mr.M.M.Vashi, Senior Counsel a/w Mr.Makrand Kale i/b
M/s.M.P.Vashi & Associates for the respondent Nos.1
and 2
Ms Pooja Kshirsagar a/w Mr.Anand Chovati i/b Yogesh
Adhia for respondent Nos.3 and 4
Ms Sushma Bhaidkar, II Assistant Court Receiver is
present

CORAM : A.S.OKA, &
P.D.NAIK,JJ.
DATE : APRIL 29, 2016

P.C.:

1 Heard the learned counsel for the appellant,
the learned senior counsel for the respondent Nos.1
and 2 and the learned counsel for the respondent
Nos.3 and 4. Notice for final disposal has been
already issued.

2 By this appeal, the appellant who is the
original defendant in the Suit No.4110 of 1995 has
challenged the order dated 20th June 2012 passed by
the learned Single Judge on Chamber Summons No.481

of 2012 and the Chamber Summons no.1664 of 2011. There is no dispute that though the Chamber Summons Nos.481 of 2012 and 1664 of 2012 were disposed of by the impugned order, due to inadvertent error, the Chamber Summons No.464 of 2012 is mentioned in the title of the impugned order instead of 1664 of 2012.

3 The Notice of Motion No.2009 of 2010 was taken out by the present appellant in the Suit No.4110 of 1995 praying for declaration that the Agreement for Sale dated 26th September 1994 on the basis of which the suit was filed and the consent terms were filed on 17th April 1998 stand rescinded altogether. By Judgment and Order dated 7th March 2011, the learned Single Judge made the said Notice of Motion absolute. The paragraphs 8,9 and 10 of the said order read thus:

"8 Since the Defendant has admittedly received an amount of Rs.18,00,000/- from the Plaintiffs and in view of the fact that the contract has now been rescinded by the instant order, the defendant is directed to deposit the said amount of Rs.18,00,000/- in this Court within a period of eight weeks from date. Benefit of this order will enure to the defendant only after he deposits the said amount of Rs.18,00,000/- in this Court with the stipulated period. The defendant on such deposit may call upon the plaintiffs to hand over the possession of the suit property. The plaintiffs would also be

entitled to withdraw the said amount after they hand over the possession of the said property to the defendant. In the event the Plaintiffs fail to hand over the possession, the defendant would be entitled to execute the instant order.

9 In the interregnum order dated 7th February 2011 would operate i.e till the Plaintiffs hand over possession.

10 The Defendant would be entitled to execute the instant order after a period of one month of the deposit of the said amount of Rs.18,00,000/- in this Court."

4 It appears that an application being Execution Application (L) No.1432 of 2011 was filed for execution of the said order by the present appellant. The Chamber Summons No.1664 of 2011 was taken out by the present appellant in the execution application. In the Chamber Summons, a prayer was made for the appointment of the Court Receiver for the purpose of taking over possession of the suit property from the second respondent (original second plaintiff) and for handing over the same to the appellant. The second prayer was for directing the Court Receiver to get demarcation of the suit property made through Survey Officer. On the said Chamber Summons, the learned Single Judge on 12th October 2011 passed an order issuing notice to the second respondent to show cause as to why the Court

Receiver should not be appointed in terms of the prayer clause (a) of the Chamber Summons. The learned Single Judge directed the Court Receiver to visit the suit property and to get it demarcated and measured and to submit a report before the returnable date. The Court Receiver's Report No.46 of 2012 records that the possession of the suit land was taken over by the Court Receiver on 11th January 2012.

5 The appellant herein filed Chamber Summons No.481 of 2012 seeking relief essentially against the respondent Nos.3 and 4 herein and against the Mumbai Municipal Corporation. The relief prayed for was for directing the Court Receiver to take physical possession of the suit property and to deploy security guards and to ensure that encroachment is not made by the respondent No.3 herein. A prayer for injunction was also made against the respondent Nos.3 and 4 restraining them from encroaching upon the suit land.

6 By the impugned order, both the Chamber Summons were disposed of by the learned Single Judge. The learned Single Judge declined to grant relief of putting the appellant in possession on the basis of the prayers made in Chamber Summons No.1664 of 2011. The Chamber Summons No.481 of 2012 was also dismissed. A direction was given by the learned Single Judge that the Court Receiver shall stand discharged. In paragraph 8 of the impugned order, the learned Single Judge observed that the property

of which the Court Receiver has taken possession is of a different shape and the size shown in the yellow colour in the survey plan.

7 As far as the impugned order in the Chamber Summons No.481 of 2012 is concerned, a separate Appeal being Appeal No.635 of 2012 was preferred by the present appellant. The said appeal was disposed of by order dated 10th April 2013 in terms of the minutes of the order. The minutes of order were between the present appellant and the respondent Nos.3 and 4 herein. Under the minutes of order, an officer of the City Survey was directed to carry out a fresh survey for measuring the suit land as well as the land claimed by the respondent Nos.3 and 4.

8 Clause 4 of the minutes of the order read thus:

"4 After the survey is carried out either party if aggrieved, shall have liberty to adopt appropriate remedy available in law. On such survey and demarcation, if the board of Court Receiver is found in any part of the plot of the Respondent Nos.4 and 5, the same shall be removed by the Court Receiver and shifted to the plot of the Appellant after expiry of three weeks from the date of issuing such plan to both the parties."

9 We have heard the learned counsel for the appellant, the learned senior counsel for the respondent Nos.1 and 2 and the learned counsel for

the respondent Nos.3 and 4. The learned counsel for the appellant submitted that the Chamber Summons No.1664 of 2011 was not opposed by the original plaintiff (respondent Nos.1 and 2). He relied upon the order passed in terms of the minutes of the order in Appeal No.635 of 2012 and submitted that now the respondent Nos.3 and 4 will have to adopt appropriate remedy as a survey has been carried out in terms of the order passed in Appeal No.635 of 2012. The learned senior counsel for the respondent Nos.1 and 2 submits to the order of the Court in view of the fact that before the learned Single Judge, Chamber Summons No.1664 of 2011 was not contested by the respondent Nos.1 and 2. He, however, submits that the amount of Rs.18,00,000/- deposited by the appellant with this Court with interest accrued thereon be permitted to be withdrawn by the respondent Nos.1 and 2. The learned counsel for the respondent Nos.3 and 4 did not dispute the fact that a survey has been carried out in terms of the order in Appeal No.635 of 2012 and stated that the said respondents desire to adopt appropriate remedy against the said survey and demarcation.

10 We have already quoted the order of the learned Single Judge dated 7th March 2011 passed in the Notice of Motion No.2009 of 2010. The said order has become final and therefore, the original plaintiffs (respondent Nos.1 and 2) are bound by the said order. In execution of the said order, the Chamber Summons was taken out by the present

appellant on which order dated 12th October 2011 was passed to which we have already made a reference. After survey was carried out in terms of the said order, the Court Receiver took over the possession of the suit land. We find that the respondent Nos.3 and 4 never challenged the order appointing the Court Receiver. The said respondents were aware of the order dated 7th March 2011 under section 28 of the Specific Relief Act, 1963 as well as the order appointing the Court Receiver as a Chamber Summons was taken out by the appellant seeking relief against the said respondents.

11 In short, the dispute raised by the respondent Nos.3 and 4 appears to be as regards boundaries of the land taken over by the Court Receiver. If that be so it is for them to take out appropriate proceedings in accordance with law. They will have to establish their right, if any, over the land in possession of the Court Receiver. However, the order dated 7th March 2011 in Notice of Motion No.2009 of 2010 will have to be implemented as it has attained finality.

12 Therefore, impugned order in so far as the Chamber Summons No.1664 of 2011 is concerned will have to be set aside and the Chamber Summons will have to be made absolute in terms of prayer clause (a). We may clarify here that in this Appeal we are not deciding the dispute as regards identity of the suit property and the objections raised by the respondent Nos.3 and 4 to the survey carried out on

the basis of the order passed in Appeal No.635 of 2012 will have to be kept open.

13 Suffice it to say that the Court Receiver took possession of the property from the original plaintiffs and therefore, the said property will have to be placed in possession of the appellant as per the order dated 7th March 2011 which has become final.

14 Accordingly, we pass the following order:

(a) Impugned order so far as it relates to the Chamber Summons No.1664 of 2011 is quashed and set aside;

(b) We direct the Court Receiver to hand over the possession of the property taken over by him to the appellant within a period of one month from the date on which an authenticated copy of this order is produced by the appellant;

(c) On handing over the possession to the appellant, the Court Receiver will stand discharged without passing accounts. Needless to state that the appellant will have to pay costs and charges of the Court Receiver;

(d) All contentions raised by the respondent Nos.3 and 4 as regards identity of the property and correctness of the survey carried out in terms of the order passed in Appeal No.635 of 2012 are kept open. The

remedies of the respondent Nos.3 and 4 are kept open;

(e) We direct the Prothonotary and Senior Master to pay a sum of Rs.18,00,000/- deposited by the Appellant in this Court to the respondent No.2 with interest accrued thereon, if any;

(f) The amount shall be paid over to the respondent No.2 on compliance being made by the Court Receiver of the order passed by this Court;

(g) The Court Receiver to file compliance report within a period of one week from the date on which the directions contained in this order are complied with;

(h) Appeal is allowed on above terms. Pending Notice of Motion does not survive and the same is also disposed of;

(i) All concerned to act upon an authenticated copy of this order.

(P.D.NAIK,J.)

(A.S.OKA,J.)