

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 8285 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 8287 OF 2017
IN
APPEAL FROM ORDER (STAMP) NO. 8285 OF 2017

Shri Sanjay Jeevanlal Suru & Anr .. Appellants/Applicants
vs.
Shri Madhav Babubhai Rathod & Ors. .. Respondents

Mr. G. S. Godbole with Ms Ulka Saranjane i/b. Shruti Tulpule for
Appellants / Applicants.
Mr. A. A. Siddiqui for Respondent Nos. 1 to 3.
Mr. Piyush Shah for Respondent No. 6.

CORAM : M. S. SONAK, J.
DATE : 23 MARCH 2017

P.C :

- 1] Heard Mr. Godbole, learned counsel for the appellants and Mr. Siddiqui for respondent nos. 1, 2 and 3 (original plaintiffs). Mr. Shah, appears for respondent no. 6 (society).
- 2] The respondent nos. 4 and 5 in this appeal, are the original defendant nos. 3 and 4 in the suit. Despite service in the suit, the said respondents, have not appeared. In any case, their presence is not necessary for the disposal of this appeal and therefore, service upon them, is dispensed.
- 3] With the consent and at the request of learned counsel for the parties, this appeal is disposed of finally at the stage of admission itself.

4] The challenge in this appeal is to the order dated 28 February 2017, by which, the notice of motion no. 2514 of 2013 taken out by respondent nos. 1, 2 and 3 (original plaintiffs) is made absolute in terms of prayer clauses (a) and (b) of the notice of motion, which read as follows:

“(a) that pending the hearing and final disposal of the present suit, the Defendants, their assigns, legal heirs and/or any person claiming through or them or in Agreement with them be restrained by an Order of injunction of this Hon’ble Court from creating third party rights and/or parting with possession in respect of residential flat admeasuring 415 sq. ft. Built-up bearing Flat No. 3 on the Ground Floor of the the building known as Shardul CHS Ltd. situated at S. No. 1, Hissa No. 10, corresponding CTS No.40 at Plot No. 16, Ashok Nagar, Village Kandivli (East), Taluka Borivali in the Mumbai Suburban District.

(b) that pending the hearing and final disposal of the present suit, this Hon’ble Court be pleased to appoint Court Receiver, High Court, Bombay under Order 40, Rule 1, of Civil Procedure Code, 1908 with such powers and duties as this Hon’ble Court may deem fit and proper with the Plaintiff as its Agents without security and royalty.”

5] Mr. Godbole and Ms Saranjane, learned counsel for the appellants submit that none of the parameters essential for making a harsh order for appointment of receiver as set out in Order XL Rule 1 of CPC and as reiterated by several decisions of this Court have been fulfilled. They submit that there is absolutely no case of any waste or misuse of the suit premises which is a flat purchased by the appellants from respondent nos. 3 and 4. They submit that there is no necessity for registration of a document which records a family settlement. They submit that in the facts and circumstances of the present case, a receiver ought not to have been appointed, particularly because, this will have the effect of dispossessing the appellants from settled possession.

6] On the other hand, Mr. Siddiqui, learned counsel for the original plaintiffs submit that the documents in relation to alleged family settlement or alleged relinquishment were not even produced on record by the appellants. He submits that the property, admittedly, belong to Babubhai Rathod and Ratna Babubhai Rathod. He submits that the original plaintiffs are admittedly, the children of Babubhai Rathod and Ratna Babubhai Rathod. He admits that even respondent nos. 3 and 4 are the children of Babubhai Rathod and Ratna Babubhai Rathod. He submits that it is quite clear that the original plaintiffs have also inherited and are therefore entitled to rights in respect of the suit premises. He submits that the so-called document by which respondent nos. 3 and 4 claim to have transferred rights in the suit property in favour of the appellants is null and void and in any case not binding upon the plaintiffs. He submits that it is in these circumstances that the notice of motion was made absolute and there is no case made out to interfere with the impugned order.

7] Mr. Shah, learned counsel for the society states that he supports the case of the appellants.

8] Rival contentions now fall for determination.

9] In a matter of this nature, society, really, can have no interest. This is basically a dispute between family members and the appellants, who claim rights through one set of family members.

10] The entire reasoning, on basis of which the notice of motion came to be made absolute is contained in paragraphs 5 and 6 of the impugned order, which reads thus :

“5. It is not disputed that the plaintiffs and defendant nos. 3 & 4 are the legal heirs of Babubhai Rathod and Ratnaben Rathod. It is manifest from the record that plaintiffs and defendant nos. 3 & 4 are entitled for the share in the suit property. It is the case of the defendants that the plaintiffs have relinquished their share in the suit property by way of family settlement cum declaration in favour of defendant nos. 3 & 4. It is just to state that the said documents are not filed by the defendants on record. It appears that the said defence is taken without there being any documentary proof in support of the same. The defence raised by the defendants does not withstand the scrutiny of law. It is settled law that Deed of Relinquishment is to be compulsorily registered by paying requisite court fees. The Deed of Relinquishment, is itself not filed on record by the defendants.

6. The case put up by the plaintiffs prima facie appears to just and proper. Hence, following order :-

ORDER

1. Notice of Motion No. 2514/2013 is made absolute in terms of prayer clause (a) and (b).

2. Costs in main cause.”

11] The aforesaid reasoning, even if assumed sufficient, to make out some prima facie case by the original plaintiffs, was certainly not sufficient to make a harsh order for appointment of the court receiver. If the prayer clause (b) of the notice of motion is perused, it is clear that the plaintiffs have applied for their appointment as agent for security and royalty also. This means that the notice not only appoints the court receiver, but further, dispossesses the appellants from the suit premises at the interim stage. The parameters, as regards appointment of court receiver are well settled in the case of **B.D.A. Ltd., Bombay vs. Central Bank of India & Anr.**¹ The Division Bench of this Court in the context of appointment of court receiver has ruled that the appointment of Receiver is recognized as one of the harshest remedies which the

¹ 1995 (1) Mh.L.J. 91

law provides for the enforcement of rights and is allowable only in extreme cases. The element of danger is an important consideration and the Court will not act on possible danger but the danger must be great and imminent, demanding immediate relief. Receiver is not to be appointed unless there is some substantial ground for such interference, such as a well founded apprehension that the property in suit will be dissipated or other irreparable mischief may be done unless the Court appoints a Receiver. Further, before resorting to such a harsh remedy, the order providing for such a remedy should articulate reasons for such exercise. In this case, there are hardly any reasons justifying the appointment of a Court Receiver.

12] In the facts and circumstances of the present case, it is quite clear that none of the parameters necessary for appointment of court receiver can be said to have been satisfied. On this ground itself, the impugned order is required to be set aside and is hereby set aside.

13] Further, even though, the appointment of the receiver is vacated, this is a fit case where the appellants are required to be put to terms. The issue as to whether the documents executed by respondent nos. 3 and 4 in favour of the appellants are legal or valid will ultimately have to be decided in the course of the trial. The learned trial Judge has held that the original plaintiffs have made out a *prima facie* case and at this stage, there is really no reason to disturb this finding recorded in the impugned order. The balance of convenience in such a situation however, is certainly not in favour of the appointment of a court receiver, but rather the balance of convenience will be achieved, if the appellants are also restrained from transferring, creating any third party rights in the suit premises, alienating or parting with possession thereof during the

pendency of the suit. The order is therefore issued to this effect.

14] The appeal is partly allowed. The impugned order is set aside. There shall however be restraint upon the appellants from transferring, creating any third party rights, alienating or parting with possession of the suit premises during the pendency of the suit. The suit was instituted in the year 2013. Therefore, the proceedings in the suit are ordered to be expedited.

15] In view of disposal of the appeal, civil application does not survive and the same is disposed of accordingly.

16] There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka