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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1622 OF 2016
IN
FIRST APPEAL NO. 563 OF 2017

Kisturam Udaram Chaudhari & Anr	...Appellants
<i>Versus</i>	
Malti Maruti Kanaskar & Ors	...Respondents

Mr SG Kudle, *for the Appellants.*
Mr HR Pawar, *for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 19th July 2017

PC:-

1. Heard.
2. The 1st and 2nd Defendants to the suit have suffered a decree of eviction on 27th January 2016. They have filed this first appeal and it has been admitted.
3. The civil application is for stay of the decree of eviction, i.e., that the appellants, original defendants Nos. 1 and 2 should not be required to deliver possession.

4. I might have considered such an application had there been a real contest by defendants nos. 1 and 2, the present appellants, in the court below. As the following brief narrative will show, the 1st and 2nd defendants did nothing before the trial court except filing a written statement.

5. The dispute is in regard to a MHADA allotted tenement. The original hut No. L.M. 153 2/3 was at {Limind **CHECK**} Nagar, Saki Vihar Road, Powai. MHADA was defendant no. 6. The plaintiff says the documents put up by defendants nos. 1 and 2, specifically a power of attorney dated 26th September 1991, an agreement of sale dated 24th January 1993 and an agreement for sale dated 27th May 1994 are all false, forged and fabricated. The plaintiff's case was that she was an illiterate lady working as a maidservant and that the original defendant No. 3 claiming to be a social worker, assured her of alternative accommodation from MHADA, the housing board, defendant No. 6. He took her signatures on blank papers and in good faith she delivered to him her original pitch card. When she enquired with MHADA, she learnt that MHADA had allotted the suit premises, described as tenement No. 17/47. Although there was this allotment, the plaintiff says she is the victim of fraud by defendant No. 3. He purported to take possession of the tenement and then sold and transferred it to defendants Nos. 4 and 5, who in turn apparently transferred it to defendants Nos. 1 and 2. Defendants Nos. 1 and 2 claim that the plaintiff irrevocably assigned the premises and relinquished her rights in this to defendant No. 3. Then defendant No. 3 supposedly relinquished the title he had obtained from the plaintiff to defendants Nos. 4 and 5; and in May

1994, defendants Nos. 4 and 5 passed title to defendants Nos. 1 and 2.

6. The plaintiff led evidence. She put documents into evidence as well. Defendants Nos. 1 to 5 stayed away from the trial, that is to say, the present appellants and the so-called previous transferors/transferee all stayed away. Only MHADA was represented in Court. The appellants did not cross-examine the plaintiff at all. Her version is, therefore, uncontroverted by defendants Nos. 1, 2, 3, 4 and 5. That includes the present appellants. Defendants nos. 1 and 2, the present appellants, also led no evidence of their own, though the Court gave them more than one opportunity to do so. In short, they neither cross-examined the plaintiff, nor led any evidence of their own.

7. In these circumstances, I am not prepared to accept the submission made by Mr Kudle for the appellants that there is in the appellants' favour a sufficient ground made out for the grant of interim relief. It might have been a different matter had they led evidence or at least cross-examined the plaintiff and had the question before the court then been a matter of appreciation of that evidence. That is not so. As far as the appellants are concerned, there is a complete lack of all evidence despite opportunities, and a complete lack of participation in support of their own case at the trial.

8. Therefore, Mr Kudle's application is inexplicable. Having not cross-examined the plaintiff, and having failed to lead any evidence

in support of their own case, the appellants suffered a decree of eviction. Mr Kudle's submission amounts to saying that the failure to cross-examine or lead evidence is inconsequential. Despite no evidence at all, the appellants' possession must be protected. In other words, in the guise of a stay application, the entire decree must be effectively reversed on the basis of no material at all. The appellants claim to be entitled to succeed on the basis of their complete inaction at the trial.

9. The civil application is dismissed. There will be no order as to costs.

10. I also find that Respondents Nos. 2, 3 and 4 are all unserved even today. I am making it clear that unless service is effected as required in law on or before 31st August 2017, the first appeal itself will stand dismissed without further reference to the Court.

11. The Appellants will deliver possession on or before 11th August 2017.

12. Mr Kudle's request for stay of this order is rejected. The reason is obvious. It is not open to the appellants to now ask for a stay on delivering possession after having squandered every opportunity to lead evidence afforded to them in the trial court.

(G. S. PATEL, J)