

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 366 OF 2017
WITH
CIVIL APPLICATION NO.469 OF 2017

Nelson Francis Bugri & Ors	...Appellants
<i>Versus</i>	
The Municipal Corporation of Gr Bombay & Ors	...Respondents

Mr HP Pandey, for the Appellants.
Mrs Madhuri More, for the Respondent No.1/MCGM.
Mr Shoaib Memon, with G Ahuja, for Respondent No.3.

CORAM: G.S. PATEL, J
DATED: 28th June 2017

PC:-

1. The Plaintiffs are in Appeal against an order dated 11th April 2017 dismissing their Motion.

2. In my view there is absolutely no reason to interfere with the impugned order. The learned Single Judge correctly observed that no case was made out before him by the Plaintiffs in their Notice of Motion for the grant of interim relief.

3. The Plaintiffs sought *inter alia* a perpetual injunction in the Motion. That was a difficulty in itself. Second, the Suit is materially defective in that it seeks a declaration to declare illegal and void a registered Deed of Conveyance dated 11th September 2003 in respect of the suit property, Final Plot No.35, CTS No.F/292 at village Bandra, Tal. Andheri, Mumbai-400 052. However there is no prayer for possession. Indeed the plaint seems to proceed on the basis that the Plaintiffs were and are in possession; and this is not shown at all.

4. The Plaintiffs' case was that they were the owners and the only heirs and legal representatives of one Mary Theresa Bugri. She is said to have been the owner of this property which includes two sheds or structures. The land is said to be gaothan land. According to the Plaintiffs, the conveyance was without lawful authority. They said the land was open land except for the two ground floor structures, which were said to be in existence since 1943. According to the Plaintiffs, their father looked after the property and its affairs following the death of their grand-mother. He died in 1980. The Plaintiffs said they were unaware of the suit property and they learnt about it only on searching old records, and this belies the claim to have been in possession, for it is not even stated that if this be so, when and how they came to be in possession. Then the Plaintiffs say they learnt of short cause Suit No.3483 of 1970 and Suit No.9107 of 1970 filed by their father against the 2nd Defendant's predecessor-in-title, one Abdul Karim Allaudin. The Plaintiffs claimed that they learnt from a RTI query that the name of one Rocky Joseph Sutari was mutated on the revenue records on 18th December 1970. The claim was the Defendants Nos.3 to 5 had encroached on the

property. Again, this is contrary to, and inconsistent with, the Plaintiffs' claim to being in possession.

5. The record indicates that Allaudin died intestate on 6th August 1974. His wife filed a testamentary petition and obtained letters of administration. The estate included this suit property. There was an agreement of 26th February 1970 between Allaudin's widow and Rocky Joseph Sutari. This was later executed in the name of Sheela Rocky Sutari. She died on 4th December 1981. Rocky died on 11th October 2001 and thus Defendants Nos.3 to 5 claimed to be the only heirs of the Sutari family.

6. Before the trial Court, the Plaintiffs were unable to establish any document of ownership. They were unable to show that their ancestor was in possession or had any title document. There was a deed of conveyance of 14th December 1963, and this shows the conveyance to Allaudin.

7. What the learned Judge found was that while claiming relief, the Plaintiffs were unable to establish any sort of legal injury. The entire plaint was on an apprehension based on an assumption and nothing further. Significantly, Exh 4 produced by the Plaintiffs purported to show a rough sketch. The property card produced by the Plaintiffs was in respect of House No.5112 in the name of the Plaintiffs' mother Mary. But this also showed the name of Sheela Sutari, the mother of Defendants Nos.3 to 5. More importantly, it did not indicate that the property card was in respect of the suit property as described in the plaint.

8. It is equally salient that the Plaintiffs' father's suit of 1970 was dismissed. A motion in that suit was also dismissed holding that he too unable to establish his title. The Plaintiffs then relied on an agreement of lease of 10th April 1947. This was amongst the documents that were discarded by the previous court, which found finding that these documents did not support the claim of the Plaintiffs to the suit property.

9. Having regard to all these factors, the learned Judge of the Trial Court quite correctly, in my view, concluded that the Plaintiffs had failed to establish their entitlement to the reliefs claimed in the Notice of Motion. Indeed, not only is this judgment absolutely correct, but I would venture to say that no other order was at all possible. To have granted the Plaintiffs interim relief would have been to accept the purest speculation, contrary to several decades of documentary evidence, registered title documents and ignoring altogether the consequence of the failure of past litigation initiated by the Plaintiffs' father.

10. In these view of the matter, there is no substance in the Appeal. It is dismissed.

11. In view of dismissal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

(G. S. PATEL, J.)