

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 766 OF 2016
WITH
CIVIL APPLICATION NO. 964 OF 2016

Kurla Malayalee Samajam (A Charitable Trust) ...Appellant
Versus
S Rajesh & Associates & Ors ...Respondents

Mr UB Bobade, *a/w Mr JH Ramugade, for the Appellant.*
Mr Mukesh Subramaniam, *i/b MP Takarde, for Respondents Nos. 1*
and 3 to 6.
Mr Vishal Kanade, *a/w Mrs Shanta Rao, i/b MD Pokale, for*
Respondents Nos. 2 and 7.

CORAM: G.S. PATEL, J
DATED: 12th June 2017

PC:-

1. Heard.
2. The Appeal is directed against an order of 28th April 2016. By this order, the learned Judge of the City Civil Court, Bombay dismissed the Plaintiffs' Notice of Motion.
3. The Plaintiffs are a public charitable trust. The dispute is in regard to an immovable property, Survey No. 192, Hissa Nos.

2(part), 10/2(part), 12(part), CTS No.435 of Kurla village, Mumbai.

4. According to the Plaintiffs, while the trust was largely dormant from 1978 to 1993, it was nonetheless the owner of this property as early as 1962. It seems that in 1993, a developer attempted to encroach on the property. There were disputes before the Charity Commissioner regarding a change report.

5. The 1st Defendant, a partnership firm called M/s. S Rajesh & Associates claims to have obtained permission from the Charity Commissioner in respect of an Agreement for Sale of this property. Mr Bobade for the Appellant trust says that while accepting that the Trustees' challenge to the Charity Commissioner's permission failed up to the Supreme Court, the fact remains that this was a permission only to a draft agreement and no agreement was ever actually executed. The Plaintiff Trust continues in possession. There are some structures on the land, chiefly a shed, an office and a reading room or a library.

6. I notice that in the cause title of the suit, the name of Defendant No. 1 is again shown as Defendant No. 7. This is explained by saying that at first the 2nd Defendant, Rajesh Rao, had constituted a firm with the name S Rajesh & Associates with himself and the predecessor of Defendants Nos. 3 to 6 one Mr Subramaniam (Defendants Nos. 3 to 6 are his heirs). It is this Subramaniam who led the contest of on behalf of M/s. S Rajesh & Associates to the Supreme Court. Subramaniam dissolved the firm,

after which Rajesh Rao seems to have created a second firm with another person, Defendant No. 8, though with the same firm name. The Plaintiffs' case, therefore, is that there is no agreement at all with these Defendants Nos. 2, 7 and 8. The Charity Commissioner's permission was granted to a firm of which Rajesh Rao and Subramaniam were partners. That firm no longer exists.

7. The Plaintiffs' case before the City Civil Court was simply to protect their possession. In fact, the suit sought nothing else. The prayers were for a declaration that the Defendants had no right to dispossess the Plaintiffs from this property and for a permanent injunction restraining the Respondents from dispossessing the Plaintiffs otherwise than according to law.

8. The Defendants appeared before the learned Judge. Defendants Nos. 7 and 8 of course supported Defendant No. 2. That was to be expected. The real difficulty arose when the learned Judge enquired of the 2nd Defendant what he had to show he was in possession. It seems that some documents were indeed shown to the learned Trial Judge. I expect that these were largely those that Mr Kanade for the Respondents to the Appeal attempts to show me today.

9. I would have to agree with the finding of the learned Judge that there was nothing to show the Defendants' possession. There is no among these documents a single document of title. There are references instead to previous pleadings and litigations and copies of

orders. These will not sufficiently show the 2nd Defendant's possession.

10. In paragraph 14 of the impugned order, the Trial Court correctly found that there was nothing to indicate to the 2nd Defendant's possession. The fallacy in the impugned order is in paragraph 16 where, referring to the earlier litigation, the learned Judge proceeded on the footing that the Agreement of Sale (one that received the Charity Commissioner's sanction) was legal and valid and, therefore, Defendants Nos. 2 and 7 could not be restrained from entering upon the suit premises or carrying out construction. This finding is incorrect particularly because Defendants Nos. 2, 7 and 8 have not on their own sought to enforce any agreement at all. They have filed no suit for specific performance. It seems to me that any such suit would face the greatest difficulty. The Agreement is unregistered. It only a stamp paper of only Rs. 10 as the Trial Court correctly observed in paragraph 13. But even more telling is the fact that the draft Agreement approved by the Charity Commissioner was in favour of firm of Rao and Subramaniam, a firm that is now dissolved, and of which the new firm of Rao and Defendants Nos. 7 and 8 is not a successor in title. There was no sanction of any kind to any agreement with a firm of which Rao and Defendants Nos. 7 and 8 were parties even as partners of a firm. Today, Subramaniam's heirs support the Plaintiff Trust.

11. It is difficult to understand how the Learned Judge could then have concluded that the Plaintiffs had not made out a *prima facie* case. I should have thought they had. The objective at that stage ought to have been to preserve the parties in *status quo* until the final

disposal of the Suit. That could only have been done by granting interim relief restraining dispossession.

12. This Court has in the Appeal and associated Civil Applications granted that relief starting from 24th June 2016 when RM Sawant J, granted an ad-interim relief in terms of prayer clause (b) of Civil Application No. 964 of 2016. That order has continued till today.

13. In my view, the correct order on the Appeal would be to continue the order dated 24th June 2014 in the Civil Application until the final disposal of the Suit and to request the Trial Court to hear the suit at its earliest convenience.

14. Mr Kanade states that a Written Statement will be filed and served by Defendants Nos. 2 and 7 on or before 30th June 2017. Defendants Nos. 3 to 6 will also filed their written statement by tht date. I am informed that the Suit itself is listed on 12th July 2017. On that date, the Trial Court will issue directions for filing of Written Statement against the other Defendants.

15. It is made clear that the Trial Court is not required to extend the time for filing Written Statements, if the writs have already been served. The Trial Court is requested to fix a schedule for the disposal of the Suit at its earliest convenience.

16. Having regard to the pendency of suits in the City Civil Court, and the emphasis on reducing the pendency of old cases, I

am not fixing any peremptory date for the disposal of the Suit. I venture to express the hope that the trial will be completed by January 2019.

17. In the event that the final order on the Suit is against the Plaintiff, the present injunction order will continue for the period of eight weeks thereafter.

18. The Appeal from Order is disposed of in these terms with no order as to costs.

19. The Civil Application does not survive and is disposed of as infructuous.

20. It goes without saying that the Suit will be decided on its merits uninfluenced either by the interim order or this order.

21. If there are any proceedings before the Charity Commissioner, those will also proceed on their own merits.

(G. S. PATEL, J.)