

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10536 OF 2016**

Ashish Hashmukhrai Piparia & Anr	...Petitioners
<i>Versus</i>	
Pragnaben B Sanghavi	...Respondent

Mr S Shamim, i/b Shamim & Co., for the Petitioners.

**CORAM: G.S. PATEL, J
DATED: 7th November 2017**

PC:-

1. The challenge is to an order dated 2nd July 2016 of the Court of Small Causes. By that order the Court allowed the Defendant's application for stay pending the disposal of Suit No.1992 of 1994 filed in this Court.

2. The present Writ Petitioner, was the Plaintiff in the Small Causes Court. He sought an eviction decree. In paragraph 6(i) to 6(xiv) of the Plaint, the Plaintiff admitted that the Defendant and others claimed to have purchased a 50% share in the suit property by a registered deed dated 5th May 1994. This purported to transfer to the Defendant an undivided 50% share right, title and interest in the building named Urvashi, and, apparently, a 100% right or interest in the leasehold land and two garages. The property in the Small Causes Court suit is the same property involved in the suit filed in the High

Court (since transferred to the City Civil Court as Suit No.8476 of 1994). In the High Court Suit No.1992 of 1994 the very same Plaintiff challenged the Defendant's claim to have acquired title in this fashion. That suit is pending now as Suit No.8476 of 1994 in the City Civil Court, to which it was transferred on an alteration in the pecuniary jurisdictional limits.

3. Before the Small Causes Court, the Defendant said that until the issue of ownership of the property is decided, the existing suit for eviction of the Defendant *qua* a tenant should not proceed. The Trial Court considered the rival arguments. Before the Trial Court the Plaintiff said that the subject matter of the two suits was different, obviously a submission that is not even remotely tenable. The eviction suit proceeded on the footing that the Defendant had no ownership rights and continued as a tenant.

4. Clearly this is a contradictory position. If the Plaintiff's challenge to the Defendant's claim to having acquired title fails, then the Defendant and the Plaintiff would become co-owners and no action for eviction of the Defendant as a tenant would then lie. By the impugned order the Trial Court considered in some detail, or at least to the extent necessary, the factual matrix and this is set out in paragraph 7 of the impugned order. In that paragraph the Trial Court noted that the Plaintiff's allegation in High Court suit was that the 1st Defendant to that suit was not entitled to transfer any right or title to the present Respondent and to other tenants.

5. Finding that the subject matter of the two suits is the same and that the decision in the High Court suit (now transferred to the City

Civil Court as Suit No.8476 of 1994) would have a material effect and bearing on the eviction action, the Trial Court allowed the Defendant's application.

6. I see no reason to interfere with that order. Apart from anything else no rights are finally decided. The Plaintiff has adopted two separate proceedings. He cannot run both of them in parallel. The property is the same but the causes of action are distinct. In the suit that is pending in the City Civil Court he must establish that he alone is the owner and that the Defendant has no ownership right and is only a tenant. Once that is done, he can then certainly proceed on merits in the eviction action. If, on the other hand, the Plaintiff is unable to dislodge the Defendant's claim to ownership, then it is difficult to see how he can sustain a tenancy eviction action in the Small Causes Court.

7. The Writ Petition is rejected. There will no order as to costs.

8. All contentions are left open in both matters.

(G. S. PATEL, J.)