

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1207 OF 2015
WITH
CIVIL APPLICATION NO. 1536 OF 2015

Ramashankar Ramsameer Yadav	...Appellant
<i>Versus</i>	
Shree Mangalmurti Associates & Ors	...Respondents

WITH
APPEAL FROM ORDER NO. 1208 OF 2015

Ramashankar Ramsameer Yadav	...Appellant
<i>Versus</i>	
Shree Mangalmurti Associates & Ors	...Respondents

Mr Rajesh S Datar, *for the Appellant/Applicant.*

CORAM: G.S. PATEL, J
DATED: 31st July 2017

PC:-

1. The Respondents have been served by substituted service. The Appellant is the original Defendant in the suit. He is in appeal against an interim order of 3rd August 2015. The Plaintiff said that it obtained development rights from the original owners of the property in question and the Plaintiff came into actual possession.

Before the development agreement the Plaintiff was told that the Defendant was a tenant of a structure of 1663 sq ft and that this formed part of the property purchased by the Plaintiff. The Plaintiff was thus required to deal with the Defendant, but the Defendant paid no rent and made several unauthorised alternations to the structure. The original landlord filed an Eviction Suit No. 468 of 2006. It was also found that the Defendant had inducted others illegally, although the Defendant claims that these were his relatives and not sub-tenants. After some negotiations the Defendant agreed to vacate the premises in question and there was an agreement between the Plaintiffs and the Defendant of 2nd April 2009. There was then a supplemental agreement, and the Plaintiffs alleged an amount of Rs. 34 lakhs was paid to the Defendant. In lieu, the Defendant surrendered his rights in respect of the property in question and vacated the premises, although his so-called relatives continued. Of the ten original occupants four left; five disputed the claim of the Plaintiff and put up a plea of sub-tenancy. These five persons filed a civil suit against the Plaintiff arguing for a declaration of that sub-tenancy and the Plaintiff was compelled to negotiate with these five persons. In the meantime, development progressed.

2. The Defendant contended that he was running a cattle stable and had a dairy farm. On a careful consideration of the material, the trial court found that the Defendant had not filed any proceeding to enforce his rights under any agreement or contract. Possession was with the Plaintiff. Accordingly, by the impugned order the trial court restrained the Defendant from interfering with the possession of the Plaintiff. The Plaintiff was also directed to furnish a written

undertaking not to alienate the suit flats until final disposal of the suit.

3. Ultimately, Defendant is aggrieved only by the first portion, viz., the injunction against disturbing the Plaintiff's possession. On that, there is no case made out for interference in appeal, because even on the Defendant's own showing, he had given up possession and, second, until after the present suit and motion were filed, the Defendant had himself not filed any proceeding for enforcement of his agreement. I am informed that such a suit has since been filed but it is subsequent in time.

4. On these facts, in my judgment, the trial court correctly balanced the competing equities.

5. There is no cause to interfere with the impugned judgment. Both appeals are dismissed. The civil application does not survive and it is disposed of as infructuous.

6. However, it is made clear that both sides are at liberty to apply on a change in circumstances.

7. As far as the Defendant's application to be paid transit or other rent is concerned, the difficulty is that even in the Defendant's own suit, the Defendant has been unsuccessful in serving the Plaintiff/Respondent. Any order for payment of rent is dependent continued on number of factors including *inter alia*, a

demonstration that the Defendant is not in breach of his contractual obligations.

8. It is sufficient to note that the Defendant is at liberty to renew his application after service. Any further application will be decided on its own merits without being influenced by the observations in the impugned order.

(G. S. PATEL, J)