

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO.1050 OF 2017
IN
SUIT (L) NO.307 OF 2017

Dr. Shashinath Mahendra Jha ... Applicant/Plaintiff

In the matter of

Dr. Shashinath Mahendra Jha ... Plaintiff

Versus

Amod Umesh Chandra Sharma ... Respondent

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Mr. K. H. Giri for the Applicant/Plaintiff.

Mr. Anoshak Daver a/w Mr. Sumit Raghani, Ms. Dipika Batheja i/b
Agrud Partners for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 05 JUNE 2017.

P.C.:

. Heard learned Counsel for the parties.

2 This suit seeks specific performance of an alleged oral agreement for sale of immovable property being a flat bearing Flat No.1502, admeasuring about 990 sq.ft., at Dhiraj Savera Complex, Siddharth Nagar, Borivali (East), Mumbai-400 066. The Notice of Motion seeks interim protection concerning the suit flat. It is the case of the Plaintiff in his suit that the Defendant is the owner of the flat. A leave and licence agreement in respect of this flat was executed by the Defendant in favour of the Plaintiff on 5 January 2009, initially for a period of three years and thereafter renewed orally from time to time. It is submitted that the Plaintiff was admittedly in possession of the suit property in pursuance of the said agreement till January 2016. It is the Plaintiff's case that during the subsistence of the leave and licence

agreement and whilst the Plaintiff was residing in the suit property, there was an oral agreement between the parties for sale of the suit property by the Defendant to the Plaintiff for a sump-sum total consideration of Rs.85,00,000/-. It is the case of the Plaintiff that in performance of this oral agreement, the Plaintiff paid various installments, including the last installment on 14 October 2014, all of which aggregated to a total sum of Rs.1,01,33,600/-. The Plaintiff, thus, claims to have ended up paying an additional amount of Rs.16,33,600/-. The Plaintiff has given particulars of these installments in paragraph-11 of the plaint. It is the Plaintiff's case that on 22 February 2016, whilst the Plaintiff was away in Narsanda, Taluka-Nadiad, District-Kheda, Gujrat State, the Defendant illegally and forcibly broke open the lock of the suit property and put his own lock thereon, thus taking over forcible possession of the suit property without the knowledge or consent of the Plaintiff and without following due process of law. The Plaintiff, in the premises, has prayed for specific performance of the oral agreement for sale.

3 If one has regard to the correspondence between the parties, particularly, the legal notice sent by the Plaintiff to the Defendant on 12 May 2016, it is apparent that at that stage, there was no case of any oral agreement for sale between the parties urged by the Plaintiff. The Plaintiff's case in the legal notice of 12 May 2016 was that the suit flat was used by the Plaintiff under a leave and licence agreement executed on 5 January 2009; that this agreement was renewed from time to time and rent duly paid by the Plaintiff till February 2016; that the lock of the suit flat was opened by the Defendant and forcible possession of the flat was taken over without following due process; that there was solvency of Rs.81,00,000/- market value given by the Plaintiff; that the Defendant had assured to help the Plaintiff for procurement of certain

contract and had taken Rs.80,73,000/- by cheques from time to time towards such contract; and that the Plaintiff had suffered a total loss of Rs.1,23,73,000/- as a result of illegal acts of the Defendant. There is not even a whisper as to the purported oral agreement for sale pleaded in the present suit. After further correspondence between the parties, finally, by an Advocate's notice dated 23 January 2017, the case of oral agreement for sale was, for the first time, alleged by the Plaintiff.

4 Besides the inherent improbability of such case, it is pertinent to note that there are various payments of Rs.25,000/- and Rs.35,000/- or their multiples forming part of the alleged total consideration shown as paid by the Plaintiff to the Defendant towards the purported oral agreement for sale. Admittedly, during all this while, rents of Rs.25,000/-, and later of Rs.35,000/-, were payable by the Plaintiff to the Defendant. Besides these rents, there is also a case urged in the legal notice of 12 May 2016 that further payments were made by cheques by the Plaintiff from time to time aggregating to Rs.80,73,000/- towards percentage of total value of supplies made under the contract procured / to be procured by the Defendant for the Plaintiff.

5 In the face of these facts, the case of oral agreement pleaded by the Plaintiff, *prima facie*, is wholly unbelievable. There is, accordingly, no merit in the Notice of Motion. The Notice of Motion is dismissed. Costs to be costs in cause.

(S.C. GUPTE, J.)