

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.8150 OF 2016

Darshan Kaur Ishar Singh (since deceased)	]	
through Heirs and Legal Representatives	]	
1A. Gurbachan Singh Ishar Singh	]	Petitioners
Vs.		
Maniben Premji Shah and others	]	Respondents

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Gurbachan Singh Ishar Singh, Petitioner in person.
 Mr. Darshit Jain i/b D.D. Jain, for respondent No.4(f).

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CORAM : R.G. KETKAR, J.

DATE : 16TH MARCH, 2018.

P.C.

Heard Mr. Gurubachan Singh Ishar Singh, Petitioner No.1 (a) in person and Mr. Jain, for respondent No.4(f). Office remark shows that affidavit of service is filed on 24th February, 2017 which indicates that respondents No.1, 2, 3B, 4B, 3F, 4E and 4F are served as per track report. Save and except, respondent No.4(f), none appears.

2. By this Petition under Article 227 of the Constitution of India, the petitioners hereinafter referred to as 'plaintiffs' have challenged the order dated 16th October, 2015 passed by the learned Judge, Court Room No.26, Court of Small Causes at Mumbai below

Exhibit 60 in R.A.E. Suit No.13/21 of 2012. By that order, the learned trial Judge rejected the application taken out by the plaintiffs for issuing directions to the defendants to pay a sum of Rs. 5.24,263.44 paise to the plaintiffs towards arrears of rent and permitted increases for the period 1st March, 2009 to 31st July, 2015.

3. Rule, Mr. Jain waives service on behalf of respondent No.4(f). Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing. In support of this Petition, Mr. Singh submitted that the learned trial Judge rejected application Exhibit 60 on the ground that the defendants have surrendered possession of the suit premises by agreement dated 6th March, 2009 to Aslina Technical Institute Private Limited (hereinafter referred to as 'Institute') and the defendants are not in possession of the suit premises. If defendants are not in possession of the suit premises from March, 2009 to July, 2015, it is not just and equitable to direct them to pay the arrears of rent for the period March, 2009 to July, 2015. Apart from that, the learned trial Judge also observed that there is dispute between the parties about ownership and under such circumstances, there is no alternative but to reject the application.

4. Mr. Singh states that he has disputed the ownership of Institute. He has invited my attention to alleged Indenture of Conveyance dated 30th May, 2007 entered between Rameshwarnath A. Vig, Rajindernath A. Vig and Devindernath A. Vig on one hand being party of the one part and Aslina Technical Institute on the other part and in particular schedule referred in that Indenture. In the schedule,

description of the property is vacant land or ground of pension and tax land (the cess whereof has been redeemed) fronting the Wadi Bunder Road, Mazgaon, Mumbai admeasuring 1773.43 square meters. As against this, the plaintiff has instituted the suit against the defendants for recovery of possession of Godown No.1B admeasuring 2081 square feet. He submitted that the learned trial Judge committed serious error by misconstruing the assertions made in paragraph 9 of the plaint. He submitted that in paragraph 9 of the plaint, the plaintiffs contended that when plaintiff No.2 went on 9th April, 2009 to collect monthly rent of the suit premise namely Godown No.B-1 for the month of March, 2009 from the defendants, payment of rent was declined by Mr. Premji B. Shah, tenant and partner of M/s. Oswal Trading Co. on the ground that possession of the suit premises had been taken over by the Institute on or about 6th March, 2009. He submitted that alleged Indenture dated 30th May, 2007 shows that the Institute has purchased open plot and not the structure. The learned Judge, therefore, was not justified in rejecting the application.

5. On the other hand, Mr. Jain supported the impugned order. He submitted that basically the defendants did not voluntarily surrender the possession of the suit premises to the Institute but they were forced to surrender. In any case, as the defendants are not in possession of the suit premises from March, 2009, no interference is called for in the impugned order.

6. I have perused the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. As noted earlier, in the present case, suit premises is Godown No. B-1 admeasuring 2081 square feet. As against this, Institute

claims to have purchased vacant land admeasuring 1773.43 square meters. Mr. Singh does not admit ownership of the Institute in respect of the suit property. Be that as it may. In any case, prima facie Institute cannot claim ownership in respect of Godown No.B-1. The learned trial Judge, however, while rejecting the application observed that the defendants have surrendered possession of the suit premises by agreement of surrender dated 6th March, 2009 to the Institute. In my opinion, the learned trial Judge was not justified in making observations in paragraph 6 having regard to the nature of the suit premises and the purchase of the property by the Institute.

7. In view thereof, the impugned order cannot be sustained and is liable to be set aside and is accordingly set aside thereby, restoring Exhibit 60 to the file of the trial Judge for deciding afresh. While deciding the application Exhibit 60, the learned trial Judge will consider nature of the premises involved in the present suit namely Godown No.B-1 and alleged rights of Institute in respect of the open land purchased under the Indenture. Hence, Rule is made absolute in aforesaid terms with no order as to costs. Liberty to apply for expeditious disposal of the suit. Order accordingly.

[R.G. KETKAR, J.]