

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.1172 OF 2018
IN
WRIT PETITION NO.9344 OF 2017

Bhanumati Mulraj Kabali] Applicant

IN THE MATTER BETWEEN:

Parag Amladi & Anr.] Petitioners

Vs.

Bhanumati Mulraj Kabali & Ors.] Respondents

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Ms. Tanmayi Gadre Rajadhyaksha a/w Mr. Ishwar Nankani a/w Ms. Janaki Garde & Ms. Aanchal Aggarwal i/b M/s. Nankani & Associates, for applicant/respondent No.1.

Mr. Huzefa Nasikwala a/w Raman Misra i/b Nasikwala Law Office, for original Petitioners and Respondents No.1 and 2.

Mr. Rakesh Pathak, for Respondents No.2 and 3.

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CORAM : R.G. KETKAR, J.

DATE : 19th JUNE, 2018.

P.C.

Heard Ms. Gadre Rajadhyaksha, learned Counsel for the applicant, Mr. Nasikwala, learned Counsel for respondents No.1 and 2 and Mr. Pathak, learned Counsel for respondents No.2 and 3 at length.

2. By this application applicant/Bhanumati Mulraj Kabali has, inter alia, prayed for;

- (a) injunction restraining the petitioners in W.P. No.9344 of 2017 from carrying out any constructions affecting Flat No.301, 3rd Floor, Chandra Bhuvan situate at 15 Pandita Ramabai Road, Gamdevi, Mumbai-400 007 and the building known as “Chandra Bhuvan” situate at Pandita Ramabai Road, Gamdevi, Mumbai 400 007;
- (b) permitting the applicant and/or authorized representative along with Architect and photographer to inspect the suit premises.
- (c) in the alternative, to appoint an independent Architect from the panel of Municipal Corporation of Greater Mumbai to carry out inspection of the suit flat and submit it's report.

3. In support of this application, Ms. Gadre/Rajadhyaksha submitted that the suit instituted by the applicant along with others was dismissed by the City Civil Court. Aggrieved by that decision, applicant and others have preferred substantive first appeal in this Court. By order dated 7th February, 2017, first appeal was admitted. In so far as interim relief is concerned, this Court issued injunction restraining the applicant and respondent No.2 Bai Tulsabai Devji Charitable Trust (for short 'Trust') from transferring or selling the trust property without leave of this Court. It was further observed that in any case suit property being the trust property, the same even otherwise cannot be transferred without obtaining permission under Section 36 of the Maharashtra Public Trusts Act. She submitted that the question whether applicant or the Trust is landlord and owner of the suit premises and suit building is *sub-judice* before this Court. If the petitioner in Writ Petition is permitted to carry out construction, it will jeopardize rights of the applicant herein. She submitted that stay granted by this Court while admitting Writ Petition may be modified so as to enable the applicant to move the Small Causes Court for the following reliefs;

- [a] that pending the hearing and final disposal of R.A.E. Suit No.1039 of 2015, the Petitioners by themselves, their associates, servants and agents be restrained by an order and injunction of this Hon'ble Court from carrying out any constructions affecting Flat No. 301, 3rd Floor, Chandra Bhuvan situated at 15 Pandita Ramabi Road, Gamdevi, Mumbai – 400 007 and the building known as “Chandra Bhuvan” situated at 15 Pandita Ramabai Road, Gamdevi, Mumbai – 400 007;
- [b] that the Applicant and/or her authorized representative along with architect and photographer be allowed to inspect Flat No. 301, 3rd Floor, Chandra Bhuvan situated at 15 Pandita Ramabai Road, Gamdevi, Mumbai – 400 007;
- [c] that in the alternative, the Hon'ble Court be pleased to appoint an independent Architect from the panel of Municipal Corporation of Greater Mumbai to carry out inspection of the suit flat and submit its report

She further expressed apprehension that respondent No.2/Trust may demolish the entire building where suit premises is situate and even if ultimately applicant succeeds in the first appeal, she will get nothing.

4. On the other hand, Mr. Nasikwala appearing for writ petitioners invited my attention to paragraph 7 of the reply of Parag Ramdas Amladi dated 31st May, 2018. In paragraph 7, it is asserted that as things stand today, there is no repair or rectification work going on in the suit flat or the suit building. The petitioners have not carried out any construction or structural alteration as alleged by the applicant. He has also invited my attention to the letter dated 22nd March, 2018 addressed by the writ petitioners to the trust seeking permission to carry out repairs. In that letter, it

is clarified that there is no construction work or structural alterations are proposed. He has also invited my attention to the works already carried out by the writ petitioners which are as under;

“The work consists of:

1. Internal toilet modifications including part retiling.
2. External part re-plastering and waterproofing of walls and roof.
3. Repairs of roof or replacement.
4. Replacement of overhead tank.
5. Internal painting.

He submitted that by communication dated 23rd March, 2018, trust after perusing the letter dated 22nd March, 2018 containing the works to be carried out had granted permission. In that communication, it was noted that there will be no construction or structural alterations while carrying out the work. He, therefore, submitted that the applicant is not entitled to any relief.

5. Mr. Nasikwala and Mr. Pathak have invited my attention to the order dated 27th October, 2016 passed by the learned Judge of the City Civil Court in Suit No.713 of 2012 and in particular finding recorded in paragraph 21 of that decision. It was submitted that after considering the admissions given by the applicant herein the learned trial Judge dismissed the suit filed by the applicant and another claiming declaration of ownership rights, mandatory and permanent injunction.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. A perusal of the record shows that the suit instituted by the applicant and another for declaration of ownership rights, mandatory and permanent injunction is

dismissed by the trial Court on 27th October, 2016. Thus, *prima facie*, after a full-fledged trial, the trial Court had held that the applicant and another are not owners of the suit premises. It is not in dispute that aggrieved by this decision, the applicant has preferred substantive first appeal in this Court and the same is admitted. I have already indicated nature of interim relief granted by this Court, As on today, on the basis of the findings recorded by the learned trial Judge, *prima faice*, applicant cannot claim either to be landlord or owner in respect of the suit premises and the suit building.

7. In view thereof, applicant cannot, as a matter of right claim any interim relief in this application. If the applicant ultimately succeeds in the first appeal, it will be open to the applicant to take inspection of the suit premises and also if the applicant finds that the tenant has carried out additions and alterations of permanent nature without her permission, she is free to adopt appropriate proceedings against the trust. In case, during pendency of the first appeal, the Trust intends to demolish the building, it will be open to her either to move the Court where appeal is pending or adopt appropriate proceedings against the Trust in accordance with law. Subject to this application fails and the same is dismissed.

8. It is made clear that observations made herein are only for the purpose of deciding the Civil Application. The Courts seized of the matters will decide the proceedings un-influenced by the observations made herein. All contentions of the parties on merits are expressly kept open.

[R.G. KETKAR, J.]