

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
JUDGE'S ORDER NO. 15 OF 2017
IN
EXECUTION APPLICATION (L) NO. 213 OF 2017
IN
APPEAL NO. 291 OF 2005
IN
REVIEW PETITION NO. 42 OF 2004
IN
SUIT NO. 3432 OF 1987**

Moolchand Kaluchand Ranka & Ors ...Plaintiffs
Versus
Manohar Vithal Telang (Since Deceased) & Ors ...Defendants

**Mr Naushad Engineer, with Yasmin Bhansali, i/b Yasmin Bhansali
& Co, for the Applicants/Plaintiffs.**
Mr Francisco D'Souza, for Defendants Nos. 1(a), 1(b) & 1(c).
Mr David Joseph, i/b David Associates, for Defendant No. 3.

**CORAM: G.S. PATEL, J
DATED: 12th April 2018**

PC:-

1. Judge's Order No. 15 of 2017 is filed by the original Plaintiffs to the Suit, which was for specific performance of an Agreement of

Sale in respect of three plots of land. The litigation has a long history going back to 1987, and the very many twists and turns of this litigation can be gauged simply by noting that in the Suit there was a Review Petition No. 42 of 2004, in which there was an Appeal No. 291 of 2005, and then there was an Execution Application (L) No. 213 of 2017, in which this Judge's Order has come to be filed. The Judge's Order demands possession in execution and that the contesting Defendants be required to take possession of their permanent alternate accommodation. Orders over the last year have worked to give the Plaintiffs possession of the plots; and the contesting Defendants are now in occupation of two flats Nos. 201 and 301.

2. In the Suit itself, there were two Consent Decrees. The first was dated 28th April 1988. I will not burden the record with a longer narrative of what happened to those Consent Terms and it must suffice to say that a second set of Consent Terms dated 11th October 2007 then came to be filed in the 2005 Appeal filed in the 2004 Review Petition filed in the Suit.

3. The present record shows that there have been orders made and directions passed for over a year now in the Judge's Order. A very short conspectus, if one might attempt the virtually impossible and encapsulate all of this in a single sentence, is to say that principal contesting Defendant Nos. 1 (since deceased, and now through his heirs and legal representatives, Defendants Nos. 1(a), 1(b) and 1(c)) and Defendant No. 3 have now been re-accommodated in two flats in a development or redevelopment on the disputed properties, and what remains is the execution of formal

agreements to serve as documents of title; and the acceptance of title certificates. With this done, the entire dispute would finally come to an end leaving perhaps only certain nominal directions in regard to the liability of the contesting Defendants to pay future outgoings in respect of the apartments they have been allotted, now occupied and now of which they are in possession.

4. I will begin with the consent order dated 11th October 2007. Defendant No. 1 was one Manohar Vithal Telang (“**Manohar**”), Defendant No. 3 was Sandeep Manohar Telang (“**Sandeep**”). Defendant No. 2 was a partnership firm. Manohar has since passed away and his heirs Anita, Nikita and Samir are on record as Defendants Nos. 1(a), 1(b) and 1(c).

5. The properties in question were three, all at Village Kole Kalyan, Taluka Andheri.

(a) Survey No. 368, Plot No. 42 is a tract of land of admeasuring 573.9 sq. mtrs. and corresponds to CTS Nos. 2663 to 2669. There is no dispute that Manohar and Sandeep were the owners of the land or that this was freehold land and has been conveyed to the Plaintiffs.

(b) The second tract of land is of the same Survey No. 368 but is Plot No. 26A and admeasures about 348.2 sq. meters. It corresponds to CTS No. 2643 (old) now

renumbered as CTS Nos. 2463A and 2643B. This land belonged to the AH Wadia Charity Trust.

- (i) It appears that the Trust leased this land to one Bhomanji Shivaji Maldodi (“**Bhomanji**”). He died intestate on 17th August 1950, and it was claimed that his leasehold rights in respect of this Plot No.26A devolved on his son Dattatray Bhomanji Maldodi (“**Dattatray**”). Bhomanji had no other sons. It seems that Dattatray entered into an agreement dated 19th February 1988 to grant development rights over, and to transfer his inherited leasehold rights in, Plot No. 26A to the present Plaintiffs’ firm, M/s Parshwa Constructions.
- (ii) So far there is no difficulty except that Manohar, the original 1st Defendant, brought LC Suit No. 1445 of 1995 in the Bombay City Civil Court at Bombay in which he claimed *inter alia* that he alone was the lessee of this land. The Suit was taken up on 5th October 2004 and after some discussion including a listing of the issues framed and, indeed, a decision rendered on merits completely negating and rejecting Manohar’s case, the Suit was dismissed as withdrawn. The reason for this is noted in the order of that date. The

sequence of events in that order is of some importance to the present Judge's Order that is before me. The Trial Court did not simply allow the withdrawal of Manohar's suit. It took up the matter for hearing and final disposal after evidence was led. The rival pleadings were set out. The issues framed were noted. The evidence was discussed. In paragraph 13 of that order, a finding was rendered on each of the issues, all answered against the plaintiff there, Manohar, the present original 1st Defendant (since deceased). In paragraph 15 of that order, the Trial Court noted the application that was then made, i.e., after this decision was pronounced on all issues, that Manohar desired to withdraw his suit. Even this was not immediately allowed. The Trial Court turned to the 1st defendant in that suit, namely, the present Plaintiffs' firm, and sought consent for withdrawal. This was, of course, immediately forthcoming. Manohar's suit was thus allowed to be withdrawn on his application, consented to by the present Plaintiffs' firm, and this was on payment of costs of Rs.5000/- With Manohar's claim to being a lessee of this plot thus finally dispensed, obviously the devolution of title on the Plaintiffs' firm, M/s Parshwa

Construction, through Dattatray remained without challenge. That is the factual narrative in regard to this plot.

- (c) An exactly identical factual scenario relates to the third plot which is Survey No. 368, Plot No.26C corresponding to CTS Nos. 2662 and admeasuring about 161.50 sq mtrs. This too was owned by the AH Wadia Trust, leased to Bhomanji, inherited by Dattatray, claimed by Manohar in the same suit in the City Civil Court, only for that claim to be ultimately abandoned with Manohar withdrawing his suit.

6. The result of this is that Manohar (and now his heirs) and Sandeep are the vendors in respect of the first of these properties, viz., Plot No.42. That must properly be noted in any Title Certificate. There is indeed such a Title Certificate issued by M/s Yasmin Bhansali and Company. It is dated 29th December 2011. That Title Certificate will be read along with the present order in regard to the freehold Plot No.42.

7. There is a corresponding Title Certificate dated 21st April 2011 by Shri Ashok Anand Rao, Advocate, in regard to the two leasehold Plots No. 26A & 26B of Survey No. 368 (CTS Nos. 2643-(old), CTS Nos 2643-A and 2643-B (new); and 2662 respectively). I have already set out above the history of the original present 1st Defendant's claim to those two leasehold plots and how that claim came to be withdrawn by the original 1st Defendant. Thus, no title

to the two leasehold plots could in law be said to have passed from the 1st Defendant to the present Plaintiffs. It is only necessary to note that the 1st Defendant did in fact mount a claim to those two leasehold plots but later withdrew it, and that this position has remained undisturbed ever since. If the title by Shri Ashok Anand Rao does not adequately mention this intervening litigation, it is perhaps because it is wholly immaterial to the devolution of title. However, Mr D'Souza for the Defendants Nos. 1(a), 1(b) and 1(c) may be correct in saying that only for completeness the Title Certificate should note that there existed such a claim in litigation and also note the result of that litigation rather than to omit all mention of the litigation altogether. He submits that the reason this is important is because the person who made that claim in litigation was the original 1st Defendant and not some complete outsider to this transaction. I do not believe I can fairly hold that the Title Certificate by Shri Ashok Anand Rao suffers from any legal infirmity for its omission to mention this litigation and its outcome; I most certainly am not inclined to go as far as saying that the Title Certificate is false or fraudulent. That Title Certificate seems to me to note that which is essential and necessary, and omits that which is irrelevant to a historical tracing of the title to these two leasehold plots. Noting that entire litigation history is no more than merely desirable. I see no reason why one should let the best be the enemy of the good. That Title Certificate is therefore accepted as good; but it may, for completeness be read with the present order which serves the purpose and provides the missing context.

8. With this done in respect of all three plots, there should be no difficulty in completing the documentation in regard to Flat Nos.

201 and 301 that are in the occupation respectively of Defendants Nos. 1(a), 1(b) and 1(c) and the 3rd Defendant. It goes without saying that when any society is formed, if not already done, these flat owners will become members of that society and will have the same rights as all other members. The agreements they must execute for sale or allotment of their respective apartments must have exactly the same operative clauses or terms as are applied to all other members, neither more nor less. They will also have the same obligations as all other members of the society, including the liability to pay their pro-rata shares of all maintenance and outgoings. I clarify that this is not to be interpreted to mean that it is only a cooperative society that can be formed, for it is always open to the stakeholders and flat owners to decide collectively that a condominium should be formed instead.

9. As to the actual document being an Agreement of Sale, it goes without saying that the consideration for the sale is that which governs the parties under the Consent Terms that have already been filed and previous orders that have been passed in this very matter. There need not be a further alteration in the recitals of those agreements in regard to the title of the property. It will be sufficient if the recitals mention that the agreement is to be read along with the present order and a copy of this order is to be annexed to the agreement for completeness. All parties are agreeable to this course of action and they agree that the foregoing narrative is a correct and accurate summary delineation of the essential historical facts.

10. The Judge's Order is, therefore, disposed of in the foregoing terms with liberty to parties to apply.

11. Some amounts were deposited with the Prothonotary and Senior Master going back to 2008. There will be the question withdrawal of those funds and the apportionment of the amounts withdrawn between the Plaintiffs on one side and Defendants Nos. 1(a)/1(b)/1(c) and Defendant No.2 on the other. I will request the learned Advocate for the Plaintiffs, Ms Bhansali, to obtain an updated statements of the amounts that are presently lying with the Prothonotary with all accrued interest and to draw up a statement of how much is to be withdrawn by which party. A copy is to be given to the learned Advocates for the contesting Defendants in advance.

12. I will pass a formal order on that withdrawal on 19th April 2018. List the matter on 19th April 2018, high on the supplementary board.

(G. S. PATEL, J)