

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

APPEAL NO. 153 OF 2017
IN
NOTICE OF MOTION NO. 2017 OF 2016
IN
SUIT NO. 78 OF 2016

Ankit Vidhya Vasini Mishra. ... Appellant.
V/s.
Mr.Naqvi Sayed Mohammed Raza and others. ... Respondents.

Mr.Rakesh Agrawal for the appellant.
Mr.Amol Mhatre with Ms.Asha Nair i/b. Diamondwalla & Co.
for respondent Nos.1 to 8.

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CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 4th September 2018.

P.C.:

This appeal preferred by the original defendant is directed against the discretionary interim order passed by the learned single Judge on a notice of motion taken out for grant of interim relief in a suit.

2. A suit was filed by the respondents- plaintiffs for challenging an agreement for sale and an agreement of leave and licence. The contention of the respondents- plaintiffs is that they are the only legal representatives of one Smt.Safia Begum Taqi Raza who was alleged to be the owner of the suit flat more particularly described in the plaint. The allegation is that the appellant- defendant has obtained the subject

agreement of sale and agreement for leave and licence in respect of the suit flat by practicing undue influence, coercion and misrepresentation on the first plaintiff- first respondent.

3. The notice of motion was taken out by the respondents-plaintiffs for various interim reliefs. One of the interim reliefs prayed for was for interim injunction restraining the appellants from disturbing the possession of the plaintiffs over the suit flat. On 22nd April 2015, the learned single Judge recorded statements of both the parties that neither of them would create any third party rights including leave and licence, lease or tenancy and would neither create any encumbrance nor create any alienations in respect of the suit flat. In paragraph-4 of the impugned order, the learned single Judge has recorded an admitted position that the disputed agreement of leave and licence was not accompanied by delivery of possession of the suit flat.

4. The grievance of the appellant in this appeal is as regards the direction issued in paragraph-5. Paragraph-5 of the impugned order reads thus:

“5. In my view the appropriate order at this stage would be to appoint the Court Receiver to take formal possession of the flat in question, and which he will proceed to do acting on an authenticated copy of this order. The Court Receiver will not, however, disturb the possession of Plaintiffs Nos. 1, 2 and 8. It is also not necessary for him to put his board on the premises. Plaintiffs Nos. 1, 2 and 8 will enter into an Agency Agreement with the Court Receiver but without security or payment of royalty. The Plaintiffs

will of course not surrender or part with possession of this property to any person.”

The learned single Judge maintained the previous order dated 22nd April 2015 and granted liberty to both the parties to apply in case of any change in circumstances.

5. The submission of the learned counsel appearing for the appellant is that there was not even a prayer made for appointment of Court Receiver in the notice of motion. Relying upon the decision of the Apex Court in the case of *Mahendra H. Patel v. Ram Narayan Singh*¹, he submitted that without there being a prayer in the notice of motion, an order of appointment of Court Receiver could not have been made.

6. We have considered the submissions. We have noted the order dated 6th February 2017 passed by the learned single Judge. For that purpose, it will be necessary to note the first part of paragraph-1 of the impugned order which before its correction by the order dated 6th February 2018 read thus:

“1. It is not in dispute that Plaintiffs Nos. 1, 2 and 8 are in possession of Flat No. 411, 4th Floor, “B” Wing, Dhupchaon, New Horizon CHSL, Four Bungalow, Survey No. 85, Plot No. 21, JP Road, Versova, Andheri (West), Mumbai 400 058.....”

The order dated 6th February 2017 reads thus:

“1. The first sentence of paragraph 1 of the order dated 30th January 2017 will need to be corrected since

1 AIR 2000 SC 3569

the Defendants does dispute that Plaintiffs Nos. 2 and 8 are in possession of the flat. The first sentence will, therefore, read thus:

“It is not in dispute that Plaintiff No. 1 is in possession of Flat No. 411, 4th Floor, “B” Wing, ...
... ..”

2. The order dated 30th January 2017 be read accordingly.”

Therefore, as far as this appeal is concerned, we will have to proceed on the footing that the first respondent- first plaintiff was admittedly in possession of the suit flat when the impugned order was passed. The effect of paragraph-5 of the impugned order is that the first plaintiff along with second and eighth plaintiffs will enter into agency agreement with the Court Receiver. We fail to understand how the original defendant can have any grievance about the said order and how he is adversely affected by the appointment of the Court Receiver. When, admittedly, the first respondent- first plaintiff is in possession of the suit flat, on the notice of motion taken out by the respondents- plaintiffs themselves where there is no prayer for appointment of Receiver in respect of the suit flat, the learned single Judge has appointed the Court Receiver and made first, second and eighth plaintiffs as the agents of the Court Receiver. In fact, this order protects the appellant as he claims that there is a decree for possession in his favour.

7. The learned counsel appearing for the appellant submits that the appointment of the Court Receiver prevents the appellant from

executing the decree. We do not agree with this. The appellant can always apply for leave of the Court which appointed the Court Receiver for executing the decree.

8. It is true that there was no prayer for appointment of Court Receiver in the notice of motion taken out by the respondents. However, we find that the appellant is no way affected by the appointment of the Court Receiver and, in fact, the appointment of Court Receiver protects the suit flat.

9. This appeal is directed against the interim order which is of a discretionary nature. We find no perversity in the exercise of discretion by the learned single Judge. Hence, subject to what is observed above, the appeal is dismissed.

(M.S.SONAK, J.)

(A.S.OKA, J.)