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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 14 OF 2017
IN
NOTICE OF MOTION NO. 1380 OF 2014
IN
SUIT NO. 2292 OF 2008
WITH
NOTICE OF MOTION LODGING NO. 2376 OF 2017

Opera Properties Ltd. a Company & Anr.

.. Appellants
(Org.Deft.Nos.1 & 3)

Versus

Balraj Parmanand Mehra & ors.

.. Respondents
(No.1 – Org. Plff. &
Nos.2 to 12 – Org. Deft.
Nos.2 & 4 to 13)

Mr. Mandar Soman for appellants.
None for respondents.

CORAM: NARESH H. PATIL &
G. S. KULKARNI, JJ.

MARCH 19, 2018.

P.C.

1. The appeal is directed against an order dated 6th January, 2016 passed by the learned Single Judge (Coram : S. C. Gupte,J.) in Notice of Motion No. 1380 of 2014 in Suit No. 2292 of 2008, whereby the learned Single Judge was pleased to partly allow the Notice of Motion and appoint a Court Receiver in respect of premises nos.3 & 4.

2. The appellants are original defendant nos.1 and 3 in a suit filed by the plaintiff - Balraj Parmanand Mehra bearing Suit No. 2292 of 2008. The plaintiff prayed for declaration and injunction and consequential reliefs in respect of suit property, Mehra House, situated at Plot No. 250-C, Scheme No.52, New Cross Road, Worli, Mumbai 400 030. The Notice of Motion was taken out by the original plaintiff seeking temporary injunction against defendant nos.1 to 7, 9 and 12. from entering upon or from creating third party rights in the suit property. The plaintiff prayed for appointment of Court Receiver by way of an alternate relief.

3. The learned counsel appearing for the appellants submits that the earlier Notice of Motion came to be dismissed in default. The plaintiff suppressed the Deed of Surrender, which was entered between the defendants and the plaintiff. Under the Deed of Surrender, payment of Rs.1 crore made by the appellants to the tenants was incorporated and consequent thereto possession of the suit property, particularly premises nos.3 and 4 was handed over. The learned counsel submitted that in the facts of the case there was no need to appoint Court Receiver. The possession of the subject premises/shop nos.3 and 4 ought to have been

handed over to the appellants. The learned Single Judge fell in error in appointing Court Receiver on the motion filed by the plaintiff.

4. In spite of court notice issued against the plaintiff, none appears for the plaintiff. The learned counsel appearing for the appellants submits that a private notice has been refused by the plaintiff – respondent no.1 herein.

5. We have perused the impugned order, averments in the plaint, order passed by the Metropolitan Magistrate, 29th Court, Dadar, Mumbai below Exhibit 17 in Misc. Application No. 34 of 2007 on 21/08/2009. The learned counsel appearing for the appellants brought to our notice simple copy of Deed of Surrender. The learned Single Judge had observed in para 4 of the impugned order that plaintiff is admittedly owner of the suit property. The contesting defendants claim a right to possess and occupy the suit property on the basis of a Deed of Assignment dated 21/4/2007 executed in favour of defendant no.1. This Deed of Assignment was executed on behalf of the plaintiff by defendant no.2 under a Power of Attorney dated 24/3/2000. In the view of the learned Single Judge, prima facie, the Power of Attorney does not confer power of transferring the

property on the donee. The powers conferred relates to development of the property and not its conveyance. The plaintiff claimed that within two days of the alleged Deed of Assignment the balance consideration was fraudulently and dishonestly deposited in the plaintiff's bank account and within few days thereafter defendant no.1 took forcible possession of the property, including premises/shop nos.3 and 4. This led to filing of proceedings for breach of peace. Premises / Shop Nos.3 and 4 at the relevant time were vacant and under lock and seal of the police for last seven years. The plaintiff, therefore, restricted his application for interim relief in respect of premises / shops nos.3 and 4. In the submission of the plaintiff, in view of the development, change of circumstances, the subject Motion was filed.

6. The learned Single Judge was of the view that keeping the premises under seal is not going to be to the benefit of either of the parties. In view the facts and the material brought on record, the learned Single Judge was convinced to appoint Court Receiver and accordingly the impugned order was passed directing appointment of Court Receiver. Certain directions were issued by the learned Single Judge which are enumerated in para 6 of the order.

7. Issue relating to the Deed of Assignment, powers conferred under Power of Attorney dated 21/4/2000 and the consequent event of taking forcible possession need to be gone into after leading evidence by the parties. At this stage, it would not be appropriate to reach out to a final conclusion in respect of the contesting rights and the pleas raised by the parties in respect of subject premises/shops nos.3 and 4. Taking into consideration all these attending facts and circumstances, the learned Single Judge thought it fit to appoint the Court Receiver.

8. In the facts, we do not find that appointment of Court Receiver would adversely affect rights and contentions of the appellants-defendants. The suit premises were locked for last seven years and this fact was also noticed by the learned Single Judge.

9. We do not notice any error in the view adopted by the learned Single Judge. All the contentions raised by the appellants herein could be raised in the proceedings of the suit. The contentions on merits are kept open.

10. The appeal is accordingly dismissed.
11. Notice of Motion (L) No. 2376 of 2017 does not survive and is disposed of.

(G. S. KULKARNI J.)

(NARESH H. PATIL,J.)