

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.909/2009
in
First Appeal No.1054/2019

Gausia begum Sayyed Iqbal Nizami Applicant
Vs.
Sayyed Mohammed Khalil Iqbal
Nizami & Ors. Respondents

Mr. Yajuvendra S. Singh for the Applicant
Mr. Prashant D. Patil for Respondent No.3.

CORAM: K.K.TATED, J.
DATED : OCTOBER 14, 2019

P.C.

1 Heard. Though Respondent Nos.1 and 2 are duly served, none appeared for them when the matter was called out.

2 By this Civil Application, the Applicant - Plaintiff is seeking an order of injunction restraining Respondent No.3 from creating any third party right, title and interest in respect of the suit property i.e. Room No.908, Chawl No.114, Motilal Nagar No.1, Goregaon (West), Mumbai - 400104 till hearing and final disposal of the First Appeal.

3 The learned counsel for the Applicant submits that in the present proceedings the Applicant - Plaintiff filed S.C.Suit No.4533/2004 before the Bombay City Civil Court at Mumbai u/s.6 of the Specific Relief Act, 1963 for

possession of the suit premises on the ground that the Applicant was forcibly dispossessed by Respondent on 18.08.2004. He submits that during pendency of the suit, the Applicant preferred Notice of Motion for an order of injunction. He submits that the Trial Court, after hearing both sides, earlier had granted ad-interim relief on 20.09.2004 and thereafter same was confirmed by order dated 18.08.2005. He submits that said injunction was continued till hearing and final disposal of the suit i.e. till 04.09.2008.

4 The learned counsel for the Applicant submits that admittedly, the Applicant is owner of the suit premises. He submits that the Respondent without following due process of law dispossessed the Applicant. He submits that as on today, the suit property is already transferred in the name of Respondent No.3. He submits that if Respondent No.3 creates third party right, title and interest in respect of the suit property, then nothing will survive in the present proceedings.

5 Hence, pending the hearing and final disposal of the First Appeal this Hon'ble Court be pleased to restrain Respondent No.3 by an order of injunction from creating any third party right, title and interest in respect of the suit property.

6 On the other hand, the learned counsel for Respondent No.3 has vehemently opposed the Civil Application. He submits that though the First Appeal was filed by the

Applicant in 2008, he never moved for ad-interim relief. He submits that since 2008, till today, there was no ad-interim relief or interim protection in favour of the Applicant. On this ground, the Civil Application is liable to be dismissed with costs.

7 The learned counsel for Respondent No.3 submits that in the present proceedings, the Applicant at her own sold the suit premises to Respondent No.3. In support of this contention the learned counsel for the Respondent relies on agreement dated 15.07.2004 executed by the Applicant in favour of Respondent NO.3, affidavit of the Applicant dated 15.07.2004 declaring that she sold the suit premises to Respondent No.3, indemnity bond dated 15.07.2004 executed by the Applicant, letter dated 15.07.2004 written by the Applicant to the society stating that she already sold the suit premises to Respondent no.3 and she wants to transfer her right, title and interest in the said tenement in favour of Respondent No.3.

8 The learned counsel for the Respondent No.3 submits that thereafter the MHADA called upon Respondent No.3 to pay penalty for unauthorised construction carried out by the Applicant. That also cleared by Respondent No.3. Thereafter Respondent No.3 filed application to MHADA to transfer the suit property in her favour after following due process of law. He submits that in view of these facts, even the Trial Court held that the Applicant has failed and neglected to prove her case u/s.6 of the Specific Relief Act. He submits that the Applicant at her own handed over

possession to the suit premises to Respondent No.3 and in spite of that she filed the suit u/s.6 of the Specific Relief Act. He submits that in view of these facts, there is no question of granting any injunction against Respondent No.3.

9 It is to be noted that bare reading of the documents placed on record by Respondent No.3 in her Affidavit in Reply dated 07.10.2019 clearly show that the Applicant had executed all the documents in favour of Respondent No.3 for transferring the same in her name. Moreover, the MHADA transferred the property in her name. Apart from that as on today Respondent No.3 is shown as a member of Motilal Nagar No.1, Best View CHS Ltd.

10 In view of these facts, I do not find any substance in the Civil Application. Same stands rejected.

(K.K.TATED, J.)