

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2643 OF 2019

Ramu Mistry

...Petitioner

Versus

Jagdish Natwarlal Naik
and others

...Respondents

....

Mr. Pradeep J. Thorat, Advocate for the Petitioner.

Mr. Dipesh Siroya, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 05th MARCH, 2019

P.C.

1. Heard Mr. Pradeep J. Thorat, learned counsel for the petitioner and Mr. Dipesh Siroya, learned counsel for respondent No.1, at length. Mr. Siroya undertakes to file Vakalatnama within one week from today.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1', has challenged the judgment and order dated 16.7.2018 passed by the learned Judge, Court Room No.26 of the Court of Small Causes at Mumbai below Exhibit-35 in R.A.E. Suit No.197/333 of 2011 of as also the judgment and order dated 18.12.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application

No.419/2018. By these orders, the Courts below rejected the application made by defendant No.1 for dismissal of the suit under Order VII Rule 11 of Code of Civil Procedure, 1908 (for short, 'C.P.C.').

3. Respondent No.1 has instituted suit against the petitioner (defendant No.1) and respondents No.2 and 3 (defendants No.2 & 3 respectively) for recovery of possession of room No.8, on the first floor of Ratan Terrace No.1, situate at T.H. Kataria Marg, Matunga Road, Mumbai – 400 016 (for short, 'suit premises'). During pendency of the suit, defendant No.1 filed application at Exhibit-35 on 8.12.2015 under Order VII Rule 11 of C.P.C. for rejecting the plaint on the ground that by a registered Deed of Assignment-cum-Conveyance dated 12.11.2012, the plaintiff has sold his right, title and interest in respect of the suit property to one M/s. Ruparel Homes India Private Limited. In view thereof, the plaintiff has no right to continue with the suit against defendant No.1 as he ceased to be landlord and owner of the suit property. The plaintiff filed reply dated 8.11.2015 opposing that application. Defendant No.1 filed rejoinder dated 11.12.2015.

4. By order dated 16.7.2018, the learned trial Judge rejected the application principally on the ground that the case made out by defendant No.1 for rejection of the plaint is not covered under Order VII Rule 11 of C.P.C. Aggrieved by that decision, defendant No.1 preferred

Revision Application which is dismissed by the Appellate Court on 18.12.2018. It is against these orders, defendant No.1 has instituted present petition.

5. In support of this petition, Mr. Thorat relied upon the decision of Apex Court in **M.M. Quasim Vs. Manohar Lal Sharma and others, (1981) 3 SCC 36** and in particular paragraphs-19 and 20 thereof. In paragraph-20, the Apex Court observed that if “A”, a landlord commences action for eviction against his tenant on the only ground of non-payment of rent and during the pendency of the proceedings transfers the property lock, stock and barrel to a third person and if the third person is not before the Court, it is just unthinkable that such a landlord can continue the suit even after he had no interest in the property. Mr. Thorat, therefore, submitted that admittedly in the present case, original plaintiff is divested of his title after execution of Deed of Assignment-cum-Conveyance dated 12.11.2012 in favour of M/s. Ruparel Homes India Private Limited and, therefore, the Courts below ought to have dismissed the suit.

6. On the other hand, Mr.Siroya relied upon following decisions :

- (i) **Dhurandhar Prasad Singh Vs. Jai Prakash University and others, (2001) 6 SCC 534; and**
- (ii) **Sharadamma Vs. Mohammed Pyarejan (dead) through Legal Representatives and another, (2016) 1 SCC 730;**

- (iii) **Raghubeer Singh Vs. Hargopal Sood and others**, decided on 23.6.2017 by Himachal Pradesh High Court.

7. Mr. Siroya submitted that Rule 10 of Order XXII of C.P.C. is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of the suit has devolved upon another during its pendency but such a suit may be continued with the leave of the court by or against the person upon whom such interest has devolved. But, if no such step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree, as the case may be, unless it is shown in a properly constituted proceeding that the original party being no longer interested in the proceedings did not vigorously prosecute or colluded with the adversary resulting in decision adverse to the party upon whom the interest had devolved. He, therefore, submitted that no case is made out for interfering with the impugned orders. In any case, he submits that M/s. Ruparel Homes India Private Limited have filed application at Exhibit-51 for impleading it as plaintiff No.2 in the suit and said application is pending. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the

material on record. It is not in dispute that the plaintiff had executed Deed of Assignment-cum-Conveyance dated 12.11.2012 in favour of M/s. Ruparel Homes India Private Limited.

9. Mr. Thorat relied upon the decision of **M.M. Quasim** (supra). A perusal of paragraph-20 thereof shows that Apex Court did not finally express any opinion in the matter as the remand order was contemplated. As against this, in the cases of **Dhurandhar Singh** (supra) and **Sharadamma** (supra), the Apex Court has observed that even if the purchaser is not brought on record, the suit may continue with the original party. In view thereof, I do not find that the Courts below committed any error in dismissing the application. That apart, M/s. Ruparel Homes India Private Limited have already filed application at Exhibit-51 for joining it as plaintiff No.2. In view thereof, no case is made out for interfering with the impugned orders. The learned trial Judge will first decide the application Exhibit-51 and thereafter will proceed with the suit in accordance with law. Subject to above, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)