

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO.6977 OF 2019

Rajendra Girija Prasad Shukla .. Appellant  
Versus  
Virendra Prasad Girijprasad Shukla & Ors. .. Respondents

Mr. R.D. S. Bhandari for appellant.  
Mr. M.A. Ansari for respondent No.1.  
Mr. Parmeshwar Bhise for respondent No.2.

**CORAM: K.K. TATED, J.**

**DATED : MARCH 19, 2019.**

**P.C. :**

- 1 Heard learned Counsel for parties.
2. Advocate Mr. M.A. Ansari submits that he received instructions to appear on behalf of respondent No.1 and Mr. Parmeshwar Bhise for respondent No.2. They undertakes to file their Vakalatnama within one week from today.
3. By this Appeal from order, appellant-original defendant No.2 is challenging the order dated 25.02.2019 passed by City Civil Court, Bombay in draft Notice of Motion in Suit No.408 of 2019 directing parties to carry out partition in the suit premises temporarily as per the judgment and decree dated 22.03.2017 passed by the Bombay City Civil Court, Bombay in

S.C. Suit No.545 of 2017. The learned Counsel for the appellant submits that in the present proceedings, the respondent/original plaintiff has filed suit for partition and separate possession being S.C. Suit No.408 of 2019 with following prayers :-

“(a) That this Hon'ble Court be pleased to pass a decree of partition thereby demarcate the 1/3rd share of the Plaintiff in the suit premises viz. Room No.501, 5<sup>th</sup> Floor, Panchratna Building, 14<sup>th</sup> Lane, Nagpada, Mumbai - 400 008, admiring about 180 sq.ft. And put the Plaintiff in exclusively possession of the 1/3rd area;

(b) If it is not possible to pass a decree of partition in such case this Hon'ble Court be pleased to pass an decree permitting the Plaintiff for officer of this Hon'ble Court to sell or assign the suit premises Room No.501, 5<sup>th</sup> Floor, Panchratna Building, 14<sup>th</sup> Lane, Nagpada, Mumbai - 400 008, admiring about 180 sq.ft., as per the provisions of Maharashtra Housing and Area Development Act to third person and consideration price receive be divided between the plaintiff and the Defendants their share of 1/3rd.

(c) That this Hon'ble Court be pleased to grant an injunction restraining the Defendant No.2 and their employee or any other person from causing any obstruction to the Plaintiff in using the suit premises Room No.501, 5<sup>th</sup> Floor, Panchratna Building, 14<sup>th</sup> Lane, Nagpada, Mumbai - 400 008, admiring about 180 sq.ft., as well as from using the suit premises for preparation a 'Pani Puri' unlawfully and without permission of Municipal Corporation;

(d) That this Hon'ble Court be pleased to direct the Defendant No.2 to bare the expenses in the ratio of 50% towards the outgoings, electricity bill and maintenance of the suit premises viz. Room No.501, 5<sup>th</sup> Floor. Panchratna Building, 14<sup>th</sup> Lane, Nagpada, Mumbai - 400 008, admiring about

180 sq.ft.;

(e) That this Hon'ble Court be pleased to grant an injunction restraining Defendant No.2 and their family members from creating third party right, title and interest in the suit premises viz. Room No.501, 5<sup>th</sup> Floor, Panchratna Building, 14<sup>th</sup> Lane, Nagpada, Mumbai - 400 008, admiring about 180 sq.ft.;

(f) Ad-interim and interim relief in terms of prayer clause (c), (d) and (e) above;

(g) Such other and further relief as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case;

(h) Costs of the suit."

4. The learned Counsel for the appellant submits that in that suit, the plaintiff preferred Notice of Motion for an order of injunction restraining the applicant from disturbing his possession and or sealing the suit premises i.e. Room No.501, 5<sup>th</sup> Floor, Panchratna Building, 14<sup>th</sup> Lane, Nagpada, Mumbai-400 008, admiring about 180 sq.ft. The learned Counsel for the appellant submits that instead of granting injunction as per the draft notice of motion, the trial Court permitted the respondent/original plaintiff to put temporary partition in the suit premises. Hence, he has filed present Appeal from Order.

5. On the other hand, the learned Counsel appearing on behalf of respondent vehemently opposed the present Appeal from Order. He submits that initially the appellant filed their S.C.

Suit No.545 of 2017 in Bombay City Civil Court, Bombay. In that suit, by consent of both the parties decree was passed on 22.03.2017 holding that appellant as well as respondents have 1/3<sup>rd</sup> Share in the suit premises. The operative part of the said decree reads thus :-

“Adv. Mr. Bhandari for Plaintiff present.

Adv. Mr. Husainali Chandrani for Defendant present.

Order below Exh.3.

Perused application which is signed by both the defendant and their advocates. Today defendant No.1 Kantidevi Shukla and defendant No.2 Virendra Shukla are present before the Court. So also the plaintiff Rajendra Shukla is present before the court along with his advocate. The plaintiff has given no objection for allowing this application. This application is preferred as per the provisions of Order 12, Rule 6 of the C.P.C. In the case in hand the defendants have admitted that they are ready to give one third share of the suit property to the plaintiff and further that they will not disturb the possession of the plaintiff. Considering this admission of fact in writing vide Exh.3, all the questions involved in the suit between the parties being admitted by the defendants, and even the plaintiff has given no objection for passing decree under Order 12, Rule 6 of the C.P.C., I allow this application and pass the following order.

1. The suit is decreed in terms of prayer clause (a) and (b)

as per the provisions Order 12, Rule 6 of the C.P.C.

2. Suit is disposed of in terms of Exh.3.”

6. The learned counsel for respondent submits that on the basis of earlier judgment and decree, the trial Court permitted them to put temporary partition. Therefore, there is no question of entertaining the present Appeal from Order.

7. I heard both the sides at length. It is to be noted that in the present proceedings, admittedly, in the suit filed by the appellant in S.C. Suit No.545 of 2017, the trial Court passed the decree as per the Order 12 Rule 6 of Civil Procedure Code holding that the appellant as well as the respondents have  $1/3^{\text{rd}}$  Share in the suit premises.

8. On the basis of earlier order, the trial Court has passed the impugned order dated 25.02.2019. The trial Court has permitted parties to demark the  $1/3^{\text{rd}}$  Shares of each party in the suit premises.

9. Hence, I do not find any reason to interfere in the said order in view of judgment and decree passed in S.C. Suit No.545 of 2017.

10. Hence, Appeal from Order stands dismissed.

**(K. K. TATED, J.)**