

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORER NO. 643 OF 2019
IN
CIVIL APPLICATION NO. 732 OF 2019

Mrs.Ruksana Narayan Raju	.. Appellant
Vs.	
Hamar Narayan Raju and anr.	.. Respondents

Mr.Pradeep J.Thorat, for the Appellant.
Mr.Prabhanjan Gujar, for the Respondents No. 1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 16th JULY, 2019

P.C. :

The appellant is the original plaintiff. The plaintiff filed the Suit against her brothers who are the defendants for various reliefs one of them being restraining the defendants from parting with possession and/or creating any third party rights by executing any document in favour of third party or in any manner obstructing the plaintiff to enter the suit land. Further plaintiff also prayed for appointment of the Court

Receiver. The plaintiff filed Notice of Motion restraining the defendants from creating third party rights and also for appointment of Court Receiver. It is the contention of the plaintiff that there is every possibility that suit land will be encroached upon as there is zopadpatti nearby the suit property. According to the plaintiff, it is necessary to protect the suit property by appointing Court Receiver. The defendants filed reply to the Notice of Motion stating that they have no intention of creating third party rights in the suit property. Further they stated that they have no objection if the Court receiver is appointed. Learned Counsel Shri Thorat appearing on behalf of the appellant contended that if the defendants have fairly come to the Court with clean hands and that they do not intend to sell the suit property and that they have no objection for appointment of the Court Receiver, the findings of trial Court that the Suit is a collusive Suit is erroneous. He would submit that the property needs to be protected as there is every possibility of property being encroached upon.

2. I have gone through the order passed by the trial

Court rejecting the Notice of Motion. Insofar as the prayer for interim relief that the defendants should not create third party rights over the suit premises, defendants have categorically stated that they do not intend to create third party rights. In this view of the matter, insofar as this aspect is concerned, the trial Court has rightly observed that no interim relief need to be granted in favour of the plaintiff.

3. In my opinion, the trial Court was justified in observing that the Suit is a collusive Suit as the pleadings on record more particularly the reply filed by the respondent would indicate. The appointment of the Court Reviver is sought to protect the suit premises from encroachment. The learned Judge of City Civil Court has observed that it is the duty of the defendants to protect the suit property. I do not find any error in the approach.

4. In this view of the matter, I do not see any reason to interfere with the order passed by the City Civil Court, Mumbai.

One of the reasons why the Notice of Motion is rejected is that the copy of the agreement for sale dated 29/07/1972 is not produced by the defendants. In the event, this agreement is produced at some later stage and in changed circumstances, the appellant will be at liberty to file a fresh Notice of Motion which may be considered on its own merits. With these observations, Appeal from Order is dismissed.

5. In view of the dismissal of the Appeal from Order, Civil Application does not survive and the same shall stand disposed of.

(M.S.KARNIK, J.)