

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.618 OF 2014
WITH
CIVIL APPLICATION NO.742 OF 2014
IN
APPEAL FROM ORDER NO.618 OF 2014**

1.Nazir Ahmed Mohd. Islam Shah
2. Amjad Mohd. Islam Shah
both residing at Flat No.702, “G”
wing, 7th floor, Kurla Nehru Nagar
Angolimala Co-op. Hsg. Society Ltd.,
Nehru Nagar, Kurla (E)
Mumbai-400 024
3. Afazal Mohd. Islam Shah
4. Ayub Mohd. Islam Shah
both residing at Flat No.701, “G”
wing, 7th floor, Kurla Nehru Nagar
Angolimala Co-op. Hsg. Society Ltd.,
Nehru Nagar, Kurla (E)
Mumbai-400 024

...Appellants

Versus

1. Iqbal Mohammed Akeel Shah
residing at Kurla Nehru Nagar,
behind Mother Dairy, Hanuman
Nagar, Kurla (east) Mumbai 400
024.
2. Akram Mohammed Akeel Shah
residing at Garodi Samaj Chawl,
behind Dinesh hardware, Kurla
Nehru Nagar, Kurla (E), Mumbai-400
024.
3. Naushad Mohammed Akeel Shah
residing at Kurla Nehru Nagar,
behind Mother Dairy, Hanuman
Nagar, Kurla (east) Mumbai 400
024.

...Respondents

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Ms Kranti S.S. Anand with Mr. Mohan Waghmode and Ms Sakina

Khothari for the Appellant.

Mr. Suresh C. More for the Respondent Nos.1 to 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT DATED: 27th FEBRUARY, 2019.

JUDGMENT:-

By consent of the parties matter is heard finally at the stage of admission.

The Appellants herein have challenged the order dated 7/5/2014 whereby the learned Judge, City Civil Court, Mumbai has dismissed the Notice of Motion No.1573 of 2014 filed by the Appellants in Suit No.263 of 2011.

2. The Respondents were the Plaintiffs and the Appellants were the Defendants in Suit No.263 of 2011 and shall be hereinafter referred to as “Plaintiffs” and “Defendants” respectively.

3. The Plaintiffs had filed the suit for declaration that they are entitled for possession of the Shop No.A-15 in 'A' wing of Kurla Nehru Nagar Angolimala Co-op. Hsg. Society Ltd, Nehru Nagar, Kurla (East), Mumbai, shall be hereinafter referred to as 'suit shop'. The Plaintiffs

also filed a Notice of Motion No.235 of 2011 seeking to restrain the Defendants from disposing of, alienating or creating third party rights in respect of the suit shop and also for appointment of Court Receiver in respect of the suit shop. Said Notice of Motion was allowed by order dated 22/8/2012 whereby the Court Receiver was appointed to take formal possession of the suit shop and the Defendants were directed to deposit Rs.5,000/- p.m. towards royalty in respect of the suit shop. The Court Receiver took formal possession of the suit shop on 24/9/2012. While the Court Receiver passed an order to handover physical possession of the suit shop, the Defendants filed the Notice of Motion No.1573 of 2014 for determining the exact location of the suit shop and to restrain the Court Receiver from taking physical possession of the suit shop.

4. The Defendants claim that under the garb of order dated 22/8/2012 the Court Receiver is in fact trying to take possession of shop No.14, which belongs to and is in possession of Shukrulla. The Defendants claim that the shop No.A-14 is not the subject matter of the suit. It is the case of the Plaintiffs that they have been allotted Shop No.A-15. Their relief is restricted to the Shop No.A-15 whereas the possession is sought to be taken of Shop No.A-14.

5. The Plaintiffs have contested the application on the ground that the Defendants are adopting only dilatory tactics. The Plaintiffs have claimed that the Defendants have not claimed any right to the Shop No.A-14. They have further stated that there is no dispute regarding the identification of the suit shop. They have stated that the Defendants have tried to create said confusion by taking advantage of the fact that shop No.A1 and A2 which are two distinct shops are combined into one shop.

6. The learned Judge after considering the material on record dismissed the application mainly on the ground that the Defendants had not challenged the earlier order dated 22/8/2012. The learned Judge also held that there is no dispute about the identity of the shop. It is held that since the shop Nos.1 and 2 are now combined into one shop, the said shop i.e. shop Nos.A-15 is the 14th shop at Loco. Said shop does not belong to Shukrulla. Hence, there is no question of restraining the Court Receiver from taking physical possession of the said shop.

7.. Perused the records and considered the submissions

advanced by the learned counsel for the respective parties.

8. The records reveal that the Plaintiffs had filed a suit under Section 6 of the Specific Performance Act in respect of the shop No.A-15. The Plaintiffs had sought interim relief in respect of the said shop. By order dated 22/8/2012, the Trial Court had allowed the notice of motion filed by the Plaintiffs and appointed the Court Receiver to take possession of the suit shop. The Defendants have not challenged the said order and hence the said order has attained finality. In pursuance of the said order the Court Receiver had taken formal possession of the suit shop. The Defendants have sought to obstruct the Court Receiver from taking physical possession of the suit shop by raising issue about the identification of the suit shop and by claiming that the suit shop belongs to his uncle Shukrulla. It is not in dispute that the chamber summons filed by Shukrulla to implead him as party to the suit has been dismissed by the Trial Court. The Defendants therefore cannot obstruct the order, which has attained finality on the ground that the suit shop belongs to Shukrulla.

9. Even otherwise there is also no dispute regarding identity of the suit shop. The sketch annexed to the notice of motion is

sufficient to identify and locate the suit shop No.A-15. Said sketch shows that there are total 17 shops towards northern side of the road. The shop Nos.1 and 2 are towards extreme western side whereas shop No.A-15 is towards eastern side. There are two other shops towards eastern side of shop No.A-15. Though there are total 17 shops at Loco, shop Nos.A-1 and A-2 having been combined together shop No.A-15 is the 14th shop at Loco. In my considered view the Defendants, who have otherwise no right to Shop no.14 have only tried to obstruct the Court Receiver from taking possession of the suit shop by raising frivolous grounds. The order of the Trial Court does not suffer from any illegality. The Appeal has no merits and is accordingly dismissed.

10. In view of dismissal of the Appeal from order, the civil application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)