

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 203 OF 2019****WITH****CIVIL APPLICATION NO. 608 OF 2019****IN****APPEAL FROM ORDER NO. 203 OF 2019**

Mohammed Yunus Ismail Shaikh & Anr.

.....Appellants.

Vs.

Salim Abdul Rehman Shaikh & Ors.

.....Respondents.

Mr. J.B. Mishra for the Appellants.

Mr. D.Y. Chitnis, Ms. Sonali Dalvi a/w Mr. M. Parte i/by M/s. Deepak Chitnis-Chiparikar & Co. for the Respondent No.1 and 4.

Ms. Madhuri More, for the Respondent No.2-MCGM

CORAM : A. S. GADKARI, J.

DATE : 11th NOVEMBER, 2019.

PC.:-

By the present Appeal, filed under Order 43 of the Code of Civil Procedure, the Appellants have impugned Order dated 11th July, 2018 passed in Draft Notice of Motion in Suit No. 605 of 2018, dismissing the said Motion.

2 Heard Mr. Mishra, the learned counsel for the Appellants and Shri. Chitnis, the learned counsel for the Respondent Nos. 1 and 4. Ms. More, the learned counsel for Respondent No.2-Corporation. Perused the entire record annexed to the Appeal Memo.

3 It is the contention of the learned counsel for the Appellants that, the Respondent No.2 is the owner of the suit premises i.e. Room No. 4A, situated at 65, Hari Jairam Chawl, 1st Floor, Maulana Azad Road, Agripada, Mumbai-400 011 and was originally tenanted to Smt. Joharabai W/o. Dawood Chotu. The Appellant is one of the five sons of the said Smt. Joharabai W/o. Dawood Chotu. That, after the demise of Smt. Joharabai W/o. Dawood Chotu, the tenancy rights of the suit premises was transferred in favour of father of Respondent No.1. The Respondent No.1 is the nephew of the Appellant. The Appellants claim to have 1/5th share and co-tenancy in the suit premises.

In the premise, the Appellants filed suit before the City Civil Court, with a prayer for declaration that, the transfer of tenancy rights in respect of suit premises in favor of Abdul Rehman Ismail Shaikh i.e. the father of Respondent No.1 and thereafter, in the name of Smt. Farzana Abdul Raheman Shaikh i.e. the mother of Respondent No.1 is illegal, void-ab-initio and for declaration that, the Appellants are entitled for 1/5th share in the suit premises and other consequential reliefs, more specifically mentioned in para 27 of the plaint. The Notice of Motion taken out by the Appellants for temporary injunction has been dismissed by the Trial Court by its impugned Order dated 11th July, 2018.

4 It is an admitted fact on record that, the Respondent No.2-Corporation is the owner of the suit premises and the said premises was

given on rental basis to Smt. Joharabai W/o. Dawood Chotu. After the demise of said Smt. Joharabai W/o. Dawood Chotu, the rent receipt and the tenancy rights in the said premises, were transferred by the Respondent No.2 Corporation in favour of Abdul Kadir Ismail Shaikh i.e. the father of Respondent No.1. The Appellants will have to prove their contention that, they can have 1/5th share in the tenanted premises owned by the Corporation by leading cogent evidence in that behalf.

5 Mr. Chitnis, the learned counsel for the Respondent Nos. 1 and 4 submitted that, such a concept of having share in a tenanted premises is not accepted under the law. I find substance in the contention raised by the learned counsel for the Respondent Nos. 1 to 4.

6 The record further indicates that, as of today, the suit premises has already been demolished and the work of re-development of the said building is in progress. The Trial Court has recorded a categorical finding that, if injunction as prayed for by the Appellants is granted to them, then irreparable loss will be caused to the Respondent No.1 and so also to the Corporation.

7 After perusing the entire record, this Court is of the considered view that, the Appellants have no right, title or interest in the suit premises except, they are the sons of Smt. Joharabai W/o. Dawood Chotu in whose favour the original tenancy was created by the Respondent No.2-Corporation. Balance of convenience does not lie in favour of the

Appellants. The Trial Court has rightly rejected Notice of Motion filed by the Appellants.

8 I find no reason to interfere with the impugned Order passed by the Trial Court.

Appeal being devoid of merits, is accordingly dismissed.

In view of dismissal of the Appeal itself, Civil Application No. 608 of 2019 does not survive, is also disposed off.

(A.S. GADKARI, J.)