

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4552/2016
IN
FIRST APPEAL NO.1754/2016

Gulam A.H. Hussain Sayyed & Ors. Applicants.

Vs.

Akhtar Abbas @ M. Hussain & Ors. ... Respondents.

Adv.Mr. RV Govilkar for applicant with Kinjal Jain.

Advocate Mr. Amogh Singh i/b Atul Singh for respondent
no.1.

Advocate Mrs. Sheetal Mane for respondent no.2.

CORAM : K.K.TATED, J.

DATED : JULY 3, 2019.

P.C.

Heard learned counsel for parties.

2. By this civil application, applicant/Plaintiff is seeking direction against respondent/defendant to deposit sum at the Rs.6500/- per month from August 2015 for using suit property during the pendency of First Appeal.

3. In the present proceeding, applicant filed L.C.suit no.5173/2002 in Bombay City Civil Court, Bombay for

declaration that Deed of partnership dated 1.6.1997 and Deed of Dissolution dated 21.7.2000 submitted by defendant nos.1 and 2 were fabricated and forged documents in relation to suit premises being shop admeasuring 1.55 sq.mtrs. alongwith wooden plank admeasuring 1.22 mtrs by 0.610 mtr and cupboard admeasuring 1.20 mtr x 0.229 mtr x 1.525 mtr. at the corner of Free India Drug House at Vithal Niwas, Jacob Circle, Dr. E.Moses road, Mumbai. Applicant also claimed other reliefs in that suit. Prayers in that case are as follows:

(a)That it be declared by this Hon'ble Court that the Deed of partnership dated 1.6.1997 and deed of dissolution dated 21.7.2000 submitted by defendant no.1 to defendant no.2 are fabricated and forged documents in relation to the suit premises being shop admeasuring 1.55 sq.mtrs alongwith wooden plank 1.22 mtrs by 0.610 mtr and cupboard admeasuring 1.20 mtr x 0.229 mtr x 1.525 mtr. at the corner of Free India Drug House at Vithal Niwas, Jacob Circle, Dr. E.Moses road, Mumbai-4000 11 and that the said documents are not binding upon the plaintiff and same are not enforceable as against the plaintiff.

b) that it be declared by this Hon'ble Court that the transfer of Shops & Establishment Certificate No.GS-I-809 and Municipal Trade License No.091422 and stall board license no.005725 in respect of suit shop being shop admeasuring 1.55 sq.mtrs. alongwith wooden

plank admeasuring 1.22 mtrs x 0.610 mtrs and cupboard admeasuring 1.20 mtr x 0.229 mtr x 1.525 mts at the corner of Free India Drug House at Vithal Niwas, Jacob Circle, Dr.E. Moses road Mumbai 4000 11 by defendant no.2 in the name of defendant no.1 from the name of the plaintiff is bad in law, illegal and inoperative.

c) That by mandatory order and direction of this Ho'ble Court, the defendant no.2 be directed to re-transfer Shop & Establishment Certificate No.GS-I-809 and Municipal Trade License No.091422 and stall board license no.005724 in the name of the plaintiff from the name of defendant. In respect of the suit shop being shop admeasuring 1.55 sq.mtrs. alongwith wooden plank admeasuring 1.22 mtrs x 0.610 mtrs and cupboard admeasuring 1.20 mtr x 0.229 mtr x 1.525 mts at the corner of Free India Drug House at Vithal Niwas, Jacob Circle, Dr.E. Moses road Mumbai 4000 11

d) That a decree be passed by this Hon'ble Court in favour of the plaintiff and as against the defendant no.1 to quit and hand over quiet and vacant possession of the suit premises being shop admeasuring 1.55 sq.mtrs alongwith wooden plank admeasuring 1.22 mtrs x 0.610 mtrs and cupboard admeasuring 1.20 mtr x 0.229 mtr x 1.525 mts at the corner of Free India Drug House at Vithal Niwas, Jacob Circle, Dr.E. Moses road Mumbai 4000 11

(e) That pending the hearing and final disposal of the suit, the defendant no.1, his agents

servants and person claiming through him be temporarily restrained by order of injunction of this Hon'ble Court from parting with possession or creating any third party rights or transferring or inducting any third person in possession of the suit premises or business run therein i.e. suit shop being shop admeasuring 1.55 sq.mtrs alongwith wooden plank admeasuring 1.22 mtrs x 0.610 mtrs and cupboard admeasuring 1.20 mtr x 0.229 mtr x 1.525 mts at the corner of Free India Drug House at Vithal Niwas, Jacob Circule, Dr.E. Moses road Mumbai 4000 11

f)For ad-interim reliefs in terms of prayer (e) above.

g) For costs of the suit.

h) For such other and further reliefs as this Hon'ble Court may grant in the circumstances of the case.

4 Said suit was dismissed by the trial court by judgment and decree dated 29.2.2012.

5 Learned counsel for applicant submits that appeal filed by the plaintiffs/appellant was admitted by this court. Applicant learnt that respondent is collecting sum of Rs. 3500/- from Laxminarayan Chourasia, Rs.3000/- pm from Sachin R. Mistry in respect of suit property. He submits that in this way respondent already created third party

right in respect of suit premises and collecting money from third person. He submits that therefore, in the interest of justice, this court be pleased to direct the respondent to deposit sum of Rs.6500/- from August 2015 till hearing and final disposal of first appeal. He submits that if application is not allowed irreparable loss will be caused to applicant because first appeal may take some time for final hearing.

6 On the other hand, learned counsel for respondent vehemently opposed the civil application. He submits that whatever is stated by applicant in para 5,6 and 7 of civil application is not correct. He submits that applicant has not placed on record any documentary evidence to show, respondent has created third party right, title and interest and collected Rs.6500 pm from third party for the suit premises. He submits that he received instructions from his client to make a statement that, the suit premises is in their possession only. He submits that the civil application is required to be dismissed with costs.

7 I heard both sides at length. During the pendency of the suit in trial court, applicant had not made any application for direction to respondent to deposit sum of Rs.6500 in court. Apart from that, the suit filed by

applicant is dismissed. Not only that, the learned counsel for respondent made a statement before this court that, the suit premises is in their possession only. Therefore, there is no question of directing respondent to deposit sum of R.6500/- in the Registry of this court during pendency of first appeal.

8 The office note shows that first appeal is not ready for final hearing.

9 Hence the following order.

- a) Civil application is rejected.
- b) Liberty granted to applicant to move this court for fixing early date of hearing of first appeal as soon as it is ready for final hearing.
- c) civil application disposed of.
- d)No order as to cost.

(K.K.TATED, J.)

