

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 77 OF 2015
IN
SUITS NO. 941 OF 2014

Godwin Robby Barretto ...Plaintiff
V/S
Matilda Robert Patel And 14 Ors. ...Defendants

Mr. Piyush M. Shah a/w. Ms. Geetika Rajpal, Advocate for the Applicant / Plaintiff.
Mr. Milan A. Desai I/b. Mr. Sunil Dubey, Advocate for Defendant Nos. 1-A, 1-C to 1-E.
Mr. H.B. Takke, AGP for Defendant No. 10.
Mr. A.A. Shaikh I/b. Mr. Yatin Shah, Advocate for Defendant No. 13.

CORAM : B. P. COLABAWALLA, J.
DATED : 10th July, 2019.

P.C.

The subject matter of the above suit are two properties Bearing CTS No. 2613 admeasuring 462.9 sq. mtrs. and CTS No. 2611 admeasuring 248.1 sq. mtrs. The total of these two properties comes to approximately 747 sq. mtrs. These properties are referred to as the larger properties. In the suit, the Plaintiff claims a 60% share, right, title and interest in the said larger properties. The remaining 40%, the Plaintiff admits belongs to one Theresa Claudy Patel and others (Defendant Nos. 1-A to 5 herein).

2. This Notice of Motion has been filed seeking an order of this Court to direct the City Survey Department to sub-divide the larger properties, and handover 60% thereof to the court receiver, who shall then put the Plaintiff in possession, as the agent of the court receiver. The other prayer sought is that Defendant No. 6 (M.C.G.M.) be directed to take steps to demolish the unauthorized structures allegedly put up by Defendant No. 1-A to 5 on the said larger properties.

3. As far as the survey of the larger properties is concerned, the same has already been conducted by the City Survey Office and a report to that effect has already been filed in this Court. The report is dated 25.09.2014. At the out-set, I may state that it is common ground before me that as far as, prayer clause “b” is concerned regarding demolition of unauthorised structures, the said prayer does not survive, in view of the order passed by this Court on 05.10.2017 in this very Notice of Motion.

4. The reliefs sought in the suit are for a declaration that the Plaintiff being the rightful owner in respect of the 60% of the larger properties, is entitled to exclusive use, occupation and possession of the same, pursuant to a Deed of Conveyance dated

30.06.2011, executed between Defendant Nos. 7 and 8 on the one hand and the Plaintiff on the other. Thereafter, a declaration is also sought that Defendant Nos. 1-A to 5 have no right title or interest of any nature whatsoever in respect of the 60% share of the Plaintiff in the larger properties. A prayer is also sought that Defendant No. 1-A to 5 be directed to handover vacant and peaceful possession of 60% of the larger properties to the Plaintiff after conducting a survey and to sub-divide the larger properties.

5. Looking at the reliefs claimed in the suit and in the Notice of Motion, it is quite apparent that if I was to grant prayer Clause “a” in the Notion of Motion in favour of the Plaintiff, I would be virtually decreeing the suit without adjudicating the rights of the respective parties. It is well settled, that such an Order cannot be passed at the interim stage. As mentioned earlier, the Plaintiff, in its final relief, seeks a sub-division of the larger properties. That relief can only be granted at the hearing and final disposal of the suit. It cannot be done at the interim stage. If there is no sub-division, and even if I were to assume that the Plaintiff has a 60% share in the larger properties, it would, at the highest, be an undivided interest in the larger properties. Without any sub-division, there is no

question of putting the Plaintiff in possession of a specific portion of the larger properties even as an agent of the court receiver. This being the position, I do not think that any further reliefs can be granted in the Notice of Motion and is disposed of accordingly.

6. It is made clear that the report filed by the City Survey Officer, whereby he purports to designate a particular portion of the suit property to the Plaintiff and Defendant Nos. 1A to 5 will not be binding on either of the parties and which is an issue that the Court will decide at the hearing and final disposal of the suit.

(B. P. COLABAWALLA, J.)