

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.**

**NOTICE OF MOTION NO. 1346 OF 2014
IN
SUIT NO. 162 OF 2014**

Shakuntala P. Patil & Ors.

..Plaintiff/s

v/s.

M/s. Nahalchand Laloochand Pvt. Ltd.
& Ors.

..Defendant/s

Mr. A.R.Shaikh I/b. Mr. S.D.Mishra for the Plaintiff/s
Mr. Rajesh Kachare I/b. A.A.Palkar for the for the Defendant Nos.1
to 3.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 26th MARCH, 2019.**

JUDGMENT.

1. In a suit for declaration, cancellation of Deed of Conveyance and for recovery of possession, the Plaintiffs have filed a Notice of Motion seeking to restrain the Defendants nos.1 to 3 from acting upon the Power of Attorney dated 29th December, 1989 and Deed of Conveyance dated 19th November, 1994 and Release Deed dated 6th November, 2002, and thereby representing themselves as owners of the suit property on the basis of the said Deed of Conveyance.

2. The dispute is in respect of the property under Survey No. 319, Hissa 4, 320 Hissa 1, and 323 Hissa 8, situated at Village Dahisar, Taluka Borivali, Mumbai. (the said property shall be hereinafter referred to as “the suit property”.) The suit property was originally owned by one Haji Ali Aagboatwala. Subsequent to the death of said Haji Ali Aagboatwala, there was a dispute between his heirs, which resulted in filing a Civil Suit No.3415 of 1957. In the said suit, the Receiver appointed by this Court by Order dated 30th June, 1950, took charge and possession of the property of said Haji Ali Aagboatwala.

3. The predecessors of the Plaintiffs who were the tenants of the suit property, had filed an application under Section 70B of Bombay Tenancy and Agricultural Lands Act, 1948, and by Order dated 22nd June, 1989 they were declared to be tenants of the suit property. Certificate under Section 32M was issued on 22nd June, 1989. Pursuant to the said Certificate, their names came to be recorded in 7/12 extract in terms of Mutation Entry No. 6891 dated 17th July, 1989. It is alleged that the Plaintiffs having been declared tenants,

and granted Certificate under 32M of the BTAL Act, the Court Receiver appointed in the Suit filed by the heirs of Aagboatwala was not competent to execute Deed of Conveyance dated 19th November, 1994 in respect of the said tenanted property. The Plaintiffs have also challenged the validity of Deed of Release dated 6th September, 2002 on the ground that the same is based on forged and fabricated Power of Attorney. The Plaintiffs have stated that they have learnt about the forgery in the month of March, 2013, only after they obtained 7/12 extract of the Suit property and learnt about the Mutation Entry No. 7131 dated 2nd January, 2003 certified on 3rd September, 2004, wherein the name of the Defendant no.1 was recorded as the owner of the suit property on the basis of the Release Deed dated 6th September, 2002. The Plaintiffs have also challenged the validity of the Sale Deed/ Deed of Release on the ground that the same were executed without obtaining permission under Section 43 of BTAL Act.

4. Mr. Shaikh, the learned Counsel for the Plaintiffs submit that Bhalchandra Patil, who had allegedly executed the Power of Attorney had already expired before execution of the said Power of Attorney.

This fact prima facie indicates that the said Power of Attorney is forged and fabricated. He contends that the Deed of Release, executed on the basis of the said Power of Attorney is illegal, null and void. He further contends that the Plaintiffs have been declared to be the tenants and the Plaintiffs having purchased the suit property, the Court Receiver was not competent to enter into any transaction in respect of the suit property. He has sought to justify the delay in approaching the Court by stating that the Plaintiffs were not aware of the execution of the Deed of Conveyance dated 19th November, 1994 as well as the Deed of Release and that they learnt about the same for the first time in the year 2013.

5. Mr. Kachare, the learned Counsel for the Defendant nos.1 to 3 submits that the Plaintiffs have suppressed the fact that by agreement dated 8th April, 1988 the Plaintiffs/their predecessors had agreed to sell the suit property to the Defendant no.1 and that they had received consideration from the Defendant no.1. He submits that since the plaintiffs/ their predecessors were declared to be the tenants, they had executed a supplementary agreement dated 29th December, 1989 and handed over possession of the suit property to

the Defendant no.1. The learned Counsel for the Defendant nos.1 to 3 claims that the Plaintiffs have made a false statement that the property was sold without obtaining permission under Section 43 of the Bombay Tenancy & Agricultural lands Act. He has further submitted that upon execution of the Deed of Release, the Defendant No.1 had filed an application before the Tahsildar, Borivali for recording the name of the Defendant no.1 in the Revenue Record. The Plaintiffs had objected to the said application and that the said objections were rejected by the learned Tahsildar by Order dated 24th August 2004, and the Mutation Entry was thereafter certified. The learned Counsel for the Defendant nos.1 to 3 contends that all the above mentioned records clearly negates the contention of the Plaintiffs that they had learnt about the transaction only in the year 2013. The Plaintiffs have suppressed the material facts and have approached the Court with unclean hands and after considerable delay. The Plaintiffs are therefore not entitled for any equitable reliefs.

6. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

7. It is not in dispute that the Plaintiffs/ their predecessors were the tenants of the suit property. The suit property was originally owned by Haji Ali Aagboatwala, and the same was the subject matter of Civil Suit No.3415 of 1957, wherein the Court Receiver was appointed. The records prima facie reveal that by Agreement dated 8th April, 1988 the Plaintiffs/ their predecessors had agreed to sell the suit property to the Defendant No.1 for total consideration of Rs.9,50,000/-. The records further indicate that on the date of execution of the said agreement, the Defendant no.1 had paid to the Plaintiffs and their predecessors a sum of Rs.50,000/-. The Plaintiffs and their predecessors had also executed a General Power of Attorney on the same day i.e. on 8th April , 1988 in favour of the Defendant No.1.

8. It is not in dispute that the Plaintiffs and their predecessors had filed an application dated 4th April, 1988 under Section 32G of the Bombay Tenancy and Agricultural Lands Act. A certificate under Section 32M of the Act came to be issued on 22nd June, 1989. The Plaintiffs and their predecessors having become deemed purchasers,

entered into another Agreement dated 29th December, 1989, and thereafter executed irrevocable power of Attorney dated 29th December, 1989 appointing Defendant nos.2 and 3 as their lawful and true attorney. A perusal of the said agreement clearly indicates that the Plaintiffs had received balance consideration of Rs.,950,000/-.

9. It is to be noted that the Plaintiffs had initially averred that they were cultivating and managing the suit property. The Defendants placed on record letter of possession dated 29th December, 1989 (Exhibit H) confirming that pursuant to the execution of the Supplementary Agreement dated 29th December, 1989 the Plaintiffs and their predecessors had handed over actual physical, vacant and peaceful possession of the suit property to the Defendant no.1. The pleadings in the written statement coupled with the letter dated 29th December, 1989 prima facie indicates that the Defendants are in possession of the suit property.

10. The records further reveal that by letter dated 6th July, 1990 (Exh. I) the Plaintiffs and their predecessors had applied for permission for sale under Section 43 of the Bombay Tenancy and

Agricultural Lands Act. The said permission was granted by Order dated 21st August, 1990. The Deeds of Conveyance were executed after obtaining the permission under Section 43 of the Act. These Deeds of Conveyance as well as the Deed of Release were registered in the year 1994 and 2002 respectively.

11. The records further indicate that upon registration of Deed of Release, the Defendant no.1 had applied to the Tahsildar for recording its name in the revenue records. The Plaintiffs and their predecessors had lodged objection to the said application. The said objection was rejected by Order dated 24th August, 2002. A perusal of the said order indicates that the objection was mainly on the ground that they had not received 30% of the balance consideration. They had stated that they would have no objection for Mutation if they were paid the said balance amount. The aforesaid order dated 24th August, 2002 clearly indicates that the Plaintiffs and their predecessor were well aware about the conveyance executed in favour of the Defendant no.1, and this fact totally belies the contention of the Plaintiffs that they had learnt about the same for the first time in the year 2013.

12. It is well settled that a party seeking discretionary relief has to approach the Court with clean hands. He is required to disclose all material facts necessary to decide the issue and suppression of material facts by itself is a ground to reject the discretionary relief. In the instant case, the records prima facie indicate that the Plaintiffs had initially averred that they were in possession of the suit property. This was apparently a false statement as the pleadings in the written statement as well as the possession receipt produced by the Defendant clearly indicated that the Defendant no.1 was put in possession of the suit property. It was only at a later stage that the Plaintiffs had amended the plaint and claimed that the defendants are in illegal possession.

13. The records also indicate that the Plaintiffs had not disclosed that they had executed an agreement dated 8th April, 1988 and that they had received Rs.50,000/- from the Defendant No.1 and that they had received the balance consideration upon execution of supplementary agreement dated 29th September, 1989. The Plaintiffs have made a false statement that the permission under

Section 43 of the Act was not obtained. The Defendants had not only suppressed the fact that they had raised objections before the Tahsildar for recording the name of the Defendant No.1 in the Revenue records and that the said objections were rejected, but made a false statement that they had learnt about the said transaction for the first time in the year 2013.

14. The records thus reveal that the Defendants have approached the Court with unclean hands and this fact is itself sufficient to decline the discretionary relief. The Plaintiffs have also failed to establish the three pre-requisites, viz. prima facie case, balance of convenience and irreparable loss, essential for grant of interim relief. The aforesaid facts, coupled with the delay in approaching the Court would not justify grant of interim relief.

15. Under the circumstances, and in view of discussion supra, the Notice of Motion is devoid of any merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)