

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

**NOTICE OF MOTION NO.1589 OF 2014
IN
SUIT NO.1008 OF 2014**

Deepak Uttamchand Gandhi ...Applicant
(orig. Plaintiff)

In the matter between
Deepak Uttamchand Gandhi ...Plaintiff
Versus
Ashok Damodar Patil & Ors. ...Defendants

.....

Dr. Birendra Saraf with Mr. Adity Shirolkar for the Plaintiff.
Mr. Kunal Chheda for the Defendant No.57.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 12th MARCH, 2019.

P.C.:-

The Applicant herein has filed this notice of motion seeking interim relief pending final disposal of the suit. Dr. Saraf, the learned counsel for the Plaintiff restricts the relief to prayer clause b(i), bb (i) and bb(ii), which reads thus:-

“b. pending the hearing and final disposal of the suit, the Defendants Nos.1 to 21, 51 to 53, 54, 55 and 57 be ordered and restrained by an Order and Injunction of this Hon'ble Court from in any manner-

b(i) interfering with and/or disturbing the Plaintiff's use, occupation or possession of the property more

particularly described in Exhibit "L" to the Plaintiff.

(bb) that this Hon'ble Court be pleased to pass the following permanent orders of injunction restraining Defendant Nos.1 to 21 and 51 to 57, by themselves or through their servants, agents, etc. or others, from in any manner-

bb(i) claiming to be the owners and/or otherwise having or holding any right in respect of the suit property whatsoever and/or making any representations or claims to or before any person or authority to such effect, whether on the basis of the purported Deed of Conveyance dated 10th October 2014 (being Exhibit "P" hereto) or otherwise;

bb(ii) purporting to do any acts in respect of the suit property, including assigning, selling, transferring, alienating, licensing, leasing mortgaging, encumbering and/or creating any third-party rights in respect of the suit property."

2. Heard Dr. Birendra Saraf, the learned counsel for the Plaintiff and Mr. Kunal Chheda, the learned counsel for the Defendant No.57, who is the only contesting party. I have perused the records.

3. It is not in dispute that one Damji Patil, Bharat Patil and Ramchandra Shankar Patil were the owners of the suit property, which is more particularly described in Schedule (Exhibit A) to the plaint at page 61. The Defendant Nos.1 to 21 and 53, who are the legal representatives of Damji Patil, Defendant Nos.22 to 34, the legal representatives of Bharat Patil and Defendant Nos. 35 to 50, the legal representatives of Ramchandra Shankar Patil, were enjoying the suit property separately as per the family arrangement. These Defendants

executed agreements for sale on 29/4/1986 in favor of Saket Developers, Defendant No.56. By these agreements, the Defendants agreed to sell their respective shares in the suit property to Defendant No.56 except CTS 74, 34/3, which was retained by Defendant Nos.22 to 34. The Defendant No.56 paid the consideration and it was put in possession of the suit property. These Defendants acknowledged the rights of the Defendant No.56 to enjoy, sub-divide or sell the suit property. The legal representatives of three branches executed a power of attorney in favour of the Defendant No.56 and thereby authorised him to sell the property. The Defendant Nos.35, 41 and 47 also executed affidavit/declaration on their behalf and on behalf of other representatives of Ramchandra Shankar Patil and confirmed that they had received full consideration and that they had not retained any right on the property, which was the subject matter of agreement for sale dated 29/4/1986.

4. The records thus prima facie indicate that the legal representatives of Damji, Bharat and Ramchandra Shankar Patil i.e. erstwhile owners of the suit property had put Defendant No.56 in possession of the suit property upon receiving the entire consideration as per the agreement dated 29.4.1986.

5. The learned counsel for the Defendant No.56 has alleged that the Plaintiff has not paid the entire compensation. It is however to be noted that none of the vendors had terminated the agreement, which was registered and executed in favour of the Defendant No.56 nor had they taken any steps to recover possession from Defendant No.56 or the Plaintiff herein.

6. The records further indicate that the Defendant No.56 entered into an agreement dated 27/4/2000 in favour of the Plaintiff with Defendant Nos.35 to 50, the legal representatives of Ramchandra Shankar Patil as confirming parties. By the said agreement, the Defendant No.56 assigned development rights to the Plaintiff and put the Plaintiff in possession of the suit property. The Defendant No.56 also authorised the Plaintiff to create third party rights including sale and mortgage in respect of the suit property. Accordingly, the Plaintiff took steps to get the plans sanctioned. The Plaintiff also entered into agreements with some third parties in respect of the units to be constructed in the suit property.

7. In March-2014 the Defendant Nos.8, 54 and 55 attempted to interfere in the suit property. Similar attempts were made in April

and May-2014. The Plaintiff therefore filed an Application under Sections 145, 146 and 147 of the Cr.P.C. before the Metropolitan Magistrate, 27th Court, Mulund. The Defendant Nos.6, 8, 51, 52, 54 and 55 filed their reply to the said proceedings, wherein they admitted that the Plaintiff was in possession of the suit property.

8. The records indicate that on 10/10/2014 the Defendant Nos.1, 6, 10, 16, 20, 21 and 53 executed a deed of conveyance dated 10/10/2014 in favour of the Defendant No.57 in respect of the property under Survey No.33/2 (1/3 share), 26/3 (part) and 26/6 (part) of CTS No.135. The property sold to the Defendant No.57 is a part of the suit property, which was originally owned and possessed by the legal representatives of Ramchandra Patil. As stated earlier, the legal representatives of the deceased Ramchandra Patil had already put Defendant No.56 in possession of the suit property and received consideration in respect of their share. The Defendant Nos.35, 41 and 47, the legal representatives of Ramchandra Patil have also executed an affidavit-declaration confirming that they have received full consideration in respect of the said property and have stated that they have not retained any right in the these properties.

9. Thus, prima facie the facts indicate that the legal representatives of Damji Patil had no right to the said property and were not competent to transfer the property. Consequently, the Defendant No.57 would not derive any title or interest in the land on the basis of the said sale deed.

10. The Plaintiff is in lawful and settled possession of the suit property. The Defendants have been disturbing his possession. Therefore Plaintiff is entitled to protect his possession by way of interim injunction. Considering the above facts and circumstances, in my considered view the Plaintiff has made out a prima facie case. He would suffer from irreparable loss if temporary injunction is not issued. In the result the Notice of motion is made absolute in terms of prayer clauses b(i), bb(i) and bb(ii) against the Defendant Nos.1 to 21, 51 to 53, 54, 55 and 57.

11. The notice of motion stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)