Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 187 OF 2019
IN
NOTICE OF MOTION NO. 1056 OF 2014
IN
COUNTER CLAIM NO. 19 OF 2011
IN
SUIT NO. 3572 OF 2006

1. M/s. Pharma, an Association of persons through its member Legend Pharmaceuticals Pvt. Ltd., having its registered office at 215, Lamba Building, Sir Bhalchandra Marg, Matunga, Mumbai – 400 019.

...Appellant

Versus

1. Richardson & Cruddas (1972) Ltd. a Government of India undertaking and Subsidiary of Bharat Yatra Nigam, having its office at Byculla Iron Works, Post Box 4503, Sir J. J. Road, Mumbai – 400 008.
2. Mrunal Bhagat, of Mumbai Indian Inhabitant, residing at C-61, Meerina Apts, Off. Nepean road, Mumbai 400026
3. Pallavi Bhagat, residing at 304 Cassia, Hiranandani Estate, Off Ghodbander Road, Patlipada, Thane (West) 400 607
4. Avanish Bhagat of Mumbai Indian Inhabitant, residing at 12, Ashok Mahal, 46-B, Peddar Road, Mumbai 400 026.

...Respondents

Mr. Nitin Thakker, Senior Advocate, a/w Mr. Vikram Sathe, Mr. Z. A. Zariwala, Mr. Nitesh Menon, I/b Dua Associates, for the Appellant.

Mr. A. C. Singh, Addl. Solicitor General of India, a/w Mr. J. P. Sen, Senior Advocate a/w M/s. Deepti Panda, Ms. Dhawani Bokaria, I/b Purnanand & Co., for Respondent no.1/Original Plaintiff in Suit.

Mr. Pradeep Thorat, for Respondent nos.2 and 3.

CORAM: R. M. BORDE &
N. J. JAMADAR, JJ
RESERVED ON: 15th March, 2019
PRONOUNCED ON: 25th March, 2019

JUDGMENT:- (Per N. J. Jamadar, J.)

1. With the consent of the Counsels for the parties, the appeal is heard finally, at the stage of admission.

2. This appeal takes exception to the order dated 30th October, 2018 passed by the learned Single Judge of this Court in Notice of Motion No.1056 of 2014, in Counter Claim No.19 of 2011 in Suit No.3572 of 2006, whereby the prayer of Defendant No.4 – Appellant to restrain the Plaintiff – Respondent no.1 herein from handing over or parting with the possession of any or entire portion of the property or from putting the suit property to any commercial exploitation, was rejected.

3. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed in the suit.

4. Shorn of unnecessary details, the background facts leading to this appeal can be stated as under:

(a) The Plaintiff is a Company registered under the Companies Act, 1956. It is a wholly owned Government of India undertaking. The suit property bearing Survey No.297, 299, 300 and 309, admeasuring 52,178.16 sq. mtrs. approximately, situated at Mulund, was originally owned by the predecessors in title of Defendant nos.1 to 3. On or about 27th April, 1974, the suit property was given on lease to the Plaintiff in terms of the Lease Agreement which, *inter alia,* contained a clause to purchase the revisionary rights of the lessors in the suit property. On 5th January, 1976 an agreement to purchase the revisionary interest in the suit property was executed. In pursuance of the conveyances executed by the respective part owners, the Plaintiff became owner of 50% of the revisionary right. The remaining 50% revisionary right is vested in the Defendants. In the meanwhile, Defendant nos.1 to 3 executed certain deeds, including conveyance and confirmations, in favour of Defendant no.4 and thereby purported to transfer their respective undivided shares in the suit property to Defendant no.4. Hence, the Plaintiff instituted the suit for specific performance of the contract to sell the remaining 50% undivided revisionary interest in the suit property in terms of the Agreement dated 5th January, 1976.

(b) The Defendants resisted the suit claim. In addition, Defendant no.4 lodged a counter-claim and sought a decree for partition and separate possession of 50% area of the suit property, on the strength of the conveyance executed by Defendant Nos.1 to 3. In the said counter-claim, Defendant no.4 took out the above numbered Notice of Motion and prayed for injunctive relief asserting, *inter alia*, that the Plaintiff – Company was proclaiming itself as the full owner of the entire suit property. The Plaintiff had invited expression of interest to develop the suit property. The Plaintiff was also subjecting the property to commercial exploitation by offering the same on leave and licence basis and/or for events like marriages, shootings etc., and thereby deriving monetary advantage to the prejudice of the claim of Defendant no.4.

(c) The learned Single Judge after considering the submissions in support of, and opposition to, the prayer in the Notice of Motion was persuaded to dismiss the Notice of Motion holding that no case for interim relief was made out as there was no material to indicate that the Plaintiff was threatening to either dispose of the suit property or create third party rights therein. Since the counter-claim also subsumes claim for damages, the learned Single Judge was not persuaded to accede to the submission regarding the use of the suit property for commercial exploitation. Bing aggrieved, Defendant no.4 has came in appeal.

5. We have heard Mr. Thakker, the learned Senior Counsel for the Appellant – Defendant no.4, Mr. Sigh, the learned Additional Solicitor General for Respondent no.1 – Plaintiff Company and Mr. Thorat, the learned Counel for Resopndent nos.2 and 3, at some length.

6. Mr. Thakker, the learned Senior Counsel, urged that the learned Single Judge ought to have considered the material on record which unequivocally indicates that, the Plaintiff – Company has been projecting itself as the full owner of the entire suit property and putting the same to commercial exploitation, though on its own showing, it has purchased only 50% of the revisionary interest in the suit property. In contrast, Defendant no.4 has purchased the balance 50% interest in pursuance of registered conveyances. In this situation, Defendant no.4 cannot be left in the lurch, urged the learned Counsel for the Appellant. It was further submitted that the relief could not have been denied for the reason that the ad-interim relief was not sought when the counter-claim was instituted or the Notice of Motion was taken out in the year 2014.

7. In opposition to this, Mr. Singh, would support the impugned order. It was submitted that indisputably the Plaintiff has been in possession of the entire suit property since the year 1974. The facts that the Plaintiff has been utilising portions of the suit property for generating some resources, and the Plaintiff has invited the expression of interest for bids to suggest the best possible use of the suit property, do not justify an apprehension on the part of Defendant no.4, that the Plaintiff would create third party rights. In the circumstances, according to the learned Counsel for Respondent no.1, no case was made out for the injunctive relief.

8. Indubitably the Plaintiff has been put in possession of the suit property in the year 1974. It is incontestible that a part of the revisionary interest has already been purchased by the Plaintiff and, thus, the Plaintiff has become part owner of the suit property. As against this, defendant no.4's rights emanate from the conveyance allegedly executed by Defendant nos.1 to 3 in the year 2006 and onwards. Defendant no.4 was never put in possession of any portion of the suit property. It is pertinent to note that the original interest of the Plaintiff in the suit property as a lessee has catapulted into a co-owner.

9. In the backdrop of aforesaid facts, the possession of the Plaintiff over the suit property has undoubtedly a lawful origin. Even if the case of Defendant no.4 is taken at par and it is assumed that Defendant no.4 is entitled to a decree for partition and separate possession of the share which Defendant no.4 claims to have acquired from Defendant nos.1 to 3, Defendant no.4 would, at best, be entitled to *mesne profits* from the date the possession of the Plaintiff is held to be wrongful.

10. Faced with the aforesaid situation, the learned Counsel for the Appellant urged that the Plaintiff would, in such a situation, be bound to maintain and render the accounts of the income from the portions of the suit property, to which Defendant no.4 is entitled. It is pertinent to note that the Plaintiff is a Government owned Company. In the ordinary course, its accounts need to be maintained and audited. Thus, at this stage, a direction to render the accounts may not be justifiable. We, however, make it clear that if eventually it is found that the Plaintiff had generated resources from the portions of the suit property, to which ultimately Defendant no.4 is found to be entitled, the Plaintiff will have to account for income in that regard.

11. The learned Single Judge was within his rights in observing that no material was placed on record to make out a *prima facie* case that the Plaintiff was either proposing to dispose of the suit property or create third party interest therein. Having regard to the corporate nature of the Plaintiff and the character of the suit property, it appears that such a transaction would not avoid publicity. To a pointed question, it was submitted by the learned Counsel for the Appellant that Defendant no.4 has already registered the *lis*. In this view of the matter, at this juncture, there is no justifiable reason to pass an order of injunction restraining the Plaintiff from alienating or otherwise creating third party interest in the suit property. Even otherwise, as and when such situation arises and there is a reasonable apprehension, Respondent no.4 can approach the Court for an appropriate interim relief.

12. The conspectus of aforesaid discussion is that no interference is warranted in the impugned order. Thus, we are inclined to dismiss the appeal with the aforesaid observations regarding the accounts of the income from the suit property and liberty to the Appellants to move the court for interim relief.

13. Having regard to the history of litigation, liberty to the Appellant to move the learned Single Judge for expeditious hearing of the suit and counter-claim.

14. Hence, the appeal stands dismissed. In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.] **[R. M. BORDE, J.]**