

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 263 OF 2021****WITH****I.A. NO. 2253 OF 2021****IN****APPEAL FROM ORDER NO. 263 OF 2021**

Maria Felicia Sequeira
(Since Deceased) Through LRs.
Sebastian Joseph Sequeira & Anr.

.....Appellants/
Applicants.

Vs.

Kantilal Manilal Sonawalla
(Since Deceased) Through LRs.
Chandrakant Kantilal Shah & Ors.

.....Respondents.

Mr. R.S. Tripathi i/by Dr. Olav Albuquerque for the Appellants/Applicants.
Mr. Viraj Tulzapurkar, Senior Advocate a/w Mr. Bhushan Deshmukh & Mr.
Prasanna Tare for the Respondent Nos. 1A to 1G.
Mr. Karl Tamboli a/w Mr. Nilesh Ranavat a/w Ms. Disha Shetty a/w Mr.
Mustaqueem B. I/by Wadia Ghandy & Co. for the Respondent No.47.

CORAM : A. S. GADKARI, J.

DATE : 21st SEPTEMBER, 2021.

PC.:-

The present Appeal from Order under Order 43 Rule 1 of the Code of Civil Procedure (for short, "*the CPC*") preferred by the Appellants/Original Plaintiffs, is directed against Order dated 11th August, 2021 passed below Exh-5 in Special Civil Suit No.83 of 2012, by the learned Civil Judge, Senior Division, Thane rejecting the said Application for

temporary injunction.

2 Heard Mr. Tripathi, learned counsel for Appellants, Mr. Viraj Tulzapurkar, learned senior counsel for Respondent Nos.1A to 1G and Mr. Tamboli learned counsel for Respondent No.47. Perused record annexed to Appeal and produced by the learned counsel for Respondent Nos.1A to 1G.

3 The Appellants/Applicants are the original Plaintiffs in the said Special Civil Suit No.83 of 2012, pending on the file of Civil Judge, Senior Division, Thane, at Thane.

 It is the case of the Appellants that, they are the only legal heirs of late Mr. John Mariano Bernadino Sequeira [for short, *“John Sequeira (deceased)”*]. The Respondent Nos. 1A to 1G are the only legal heirs of late Kantilal Manilal Sonawala. That, the Respondent Nos. 2A to 2D are the only legal heirs of Dayalal Chhaganlal Acharya (deceased).

 That, John Sequeira (deceased) during his life time and up to the year 1949, was engaged in the business of buying and selling immovable properties for and on behalf of one Mr. Antonio Manoel DeSouza (deceased) and over the years, a close relationship was developed between them. That, on 14th June, 1949, Mr. Dayalal Chhaganlal purchased Suit land admeasuring about 332 acres and 35.¼ gunthas (ares) or thereabout, lying and situated at Revenue village Khari and within the jurisdiction of Registration Sub-District and District of Thane and more particularly described in para No.4(a) of the plaint, by executing duly

registered Indenture bearing Registration No.BOM/2859/1949 from its original owners namely members of Pupala family as Vendors for a valuable consideration of Rs.2,50,000/-. The said Dayalal Chhaganlal thus, became the absolute owner of the Suit property. Name of Dayalal Chhaganlal was mutated in the Revenue Records in his first two names i.e. '*Dayalal Chhaganlal*' as per Mutation entry No. 119.

4 That, by a Deed of Conveyance dated 27th July 1949, Dayalal Chhaganlal sold and conveyed the Suit property in favour of John Sequeira (deceased) for a consideration of Rs.3 lacs. Mr. Antonio M. DeSouza was a confirming party to the said Deed. Along with the said Deed of Conveyance, two Deeds of Indemnity were also executed between the parties whereby, the said Dayalal Chhaganlal and Mr. Antonio M. DeSouza separately indemnified John Sequeira (deceased) against all claims, losses or demands in respect of the said Suit property. The said Deed of Conveyance and two Deeds of Indemnity along with Index-II were duly registered at Serial Nos.3519 of 1949, 3520 of 1949 and 3521 of 1949 respectively.

It is the case of the Appellants that, at the end of the said Conveyance Deed, the Registration Authority has mentioned and identified Dayalal Chhaganlal as '*s/o Chhaganlal Dahyabhai Davawala*'. It is the contention of the Appellants that, the surname of Dayalal Chhaganlal was and is '*Davawala*'.

5 That, the original title deeds of the Suit property after its execution in the year 1949, were with Mr. Antonio M. DeSouza who expired in the year 1950. The legal heirs of Mr. Antonio M. DeSouza also migrated to foreign lands in the year 1950 itself and were therefore not traceable. That, the original title deeds of the Suit property of John Sequeira (deceased) therefore were lost forever, without any traces of the registration numbers thereof with John Sequeira (deceased).

 It is the specific case of the Appellants that, in the year 1950, John Sequeira (deceased) suffered a major accident which handicapped him physically and caused '*partial amnesia*'. That, in the year 1960, John Sequeira (deceased) further suffered paralytic stroke, which severally affected his speech and memory. Due to the said incidents, John Sequeira (deceased) was unable to pursue his matters in relation to the Suit property either with the Registration Authority or with the Revenue Authorities.

 John Sequeira (deceased) thereafter, during his life time used to vaguely make mention to his family members the Appellants herein from time to time about his dealings with one Mr. Antonio M. DeSouza and of certain properties in his own name and loss of the original documents. However, due to the physical handicappedness resulted due to the aforesaid two incidents, John Sequeira (deceased) was unable to give specific details of the said property. In due course of time, the registration records and indexes which were in the record of registration authorities, got damaged

and torned beyond recognition.

The Appellants have categorically stated that, the name of John Sequeira (deceased) could not be mutated in the year 1949 in the Revenue Records pertaining to the Suit property, for the reasons unknown and due to some lapse on the part of Revenue Authorities. As a result thereof, the name of John Sequeira (deceased) did not appear in the Revenue Records and the original Mutation Entry No.119 in the name of Dayalal Chhaganlal continued. John Sequeira (deceased) expired in the year 1997, without dealing with the Suit property during his life time, in any manner whatsoever.

6 That, in February, 2009, the Appellant No.2 visited office of Sub-Registrar of Assurances, Old customs House, Mumbai to search in the records and indices to ascertain whether a document bearing Registration No.3517 of 1949 pertaining to a property situated at Ambernath stood in the name of one Mr. Vasanji Lalji. As the old records were torn, the Appellant No.2 referred to Registration List Book of 1949 and during the search therein, the Appellant No.2 spotted immediately below the said Entry No.3517 the name of John Sequeira (deceased) entered in the said List Book in connection with the three entries namely 3519, 3520 and 3521 of 1949.

Appellant No.2 got photocopies of the said documents from the

Government Photo Registry, Pune (for Short, '*GPR, Pune*') on 13th April, 2009. After examining those 3 documents, the Appellant No.2 realized at that stage that, those documents were the same lost Title Deeds pertaining to the said '*Khari*' lands, used to be mentioned incoherently by his father John Sequeira (deceased) and during the life time of John Sequeira (deceased) which the Appellants had mistakenly thought of '*salt-pan*' lands. The Appellants realized that, the said '*Khari*' lands were in fact located at village '*Khari*', District Thane, which is the Suit property herein.

The Appellant No.2 came to know further details and status of the Suit property after making inquiries about the same with the Registration and Revenue Authorities and came to know that, the name of the said John Sequeira (deceased) was missing from the Revenue Records at Thane pertaining to the Suit property. The Appellants therefore realized that, in the interim period the Suit property has been usurped by illegal means in the Registration and Revenue Records by the said Sonawala and the said Acharya and their respective heirs i.e. the Respondent Nos.1A to 1G and 2A to 2D by resorting to fraud, forgery of documents and impersonation acts.

It is the further case of the Appellants that, Mr. Acharya and Mr. Sonawala took undue advantage of the fact that, the old revenue records of the Suit property has continued to reflect the first two names of the Original Dayalal Chhaganlal in the said Mutation Entry No.119. That,

by a Conveyance Deed dated 5th October, 1965 bearing Registration No.3062 of 1965, Mr. Acharya impersonated himself as Vendor Dayalal Chhaganlal, purportedly sold the said Suit property to Mr. Kantilal Sonawala. Pursuant to the said sale transaction, name of Mr. Kantilal Sonawala was entered into the Revenue Records of the Suit property by Mutation Entry No.190.

It is the case of the Appellants that, the said Conveyance Deed dated 5th October, 1965 was not executed by the Original Dayalal Chhaganlal but instead of his signature which was available in the old Registration Records of 1949 in original Conveyance No.2859 of 1949, was forged and adopted therein in 1965 by impersonating by Mr. Acharya, as '*Dayalal Chhaganlal Acharya*'. That, the original Vendor's third name i.e. Mr. Dayalal Chhaganlal's surname was recorded in the Title Deeds in the year 1949 as '*Davawala*' i.e. '*son of Chhaganlal Dayabhai Davawala*'. That, thereafter the said Deed of Conveyance No.3062 of 1965 was cancelled by a Deed of Cancellation dated 28th June, 1967 bearing No.2703 of 1967 executed between the said Mr. Acharya and Mr. Sonawala and pursuant thereto, the Mutation Entry No.190 was also cancelled by the Revenue Authorities on 1st April, 1968.

7 Appellants therefore, filed the present Suit for declaration that, the Deed of Conveyance dated 27th July, 1949 bearing Registration No.3519 of 1949 and the two accompanying Indemnities of the same date, bearing

Registration Nos.3520 and 3521 of 1949 are valid, subsisting and binding in respect of the Suit property; declaring that, the said John Sequeira (deceased) and his heirs i.e. the Appellants herein, as the true and lawful owners of the Suit property; that, the Indenture dated 5th October, 1965 bearing Registration No.3062 of 1965 and the purported Deed of Cancellation dated 28th June, 1967 bearing Registration No.2703 of 1967 as illegal, null and void *ab-initio* and of no effect whatsoever and the same may be cancelled by an Order of the said Court and for injunction against the Respondents in relation to the Suit property and further consequential reliefs more specifically mentioned in paragraph No.23 of the plaint.

8 Appellants filed an Application below Exh-5 under Order 39 Rule 1 and 2 read with Section 151 of the CPC on 27th January, 2012. The Trial Court by its Order dated 31st January, 2012 was pleased to issue show cause notice to the Respondents and meanwhile directed them to maintain *status-quo* with respect to the Suit property.

The Respondent/Defendant Nos.2A, 2B and 2D filed their written statement below Exh-40 in the month of March, 2014. The Respondent/Defendant Nos.1A to 1G filed their written statement below Exh-94 on 2nd November, 2018.

9 Perusal of written statements of the contesting Respondents/Defendants would reveal that, the said Respondents/Defendants have also challenged the Appellants'/(Plaintiffs')

Sale Deed and Indemnities dated 27th July, 1949 on the ground of fraud and forgery. They have contended that, the Appellants' father John Sequeira (deceased) has prepared those false and fabricated documents by taking undue advantage of similarity of first two names of the Original purchaser '*Dayalal Chhaganlal*' by showing his surname as '*Davawala*'.

The Trial Court by its impugned Order dated 11th August, 2021 passed below Exh-5 was pleased to reject the said Application filed by the Appellants.

10 Mr. Tripathi, learned counsel for the Appellants submitted that, the Order directing to maintain status-quo was in force since 31st January, 2012 till the rejection of the said Application on 11th August, 2021. That, the said Order of *status-quo* was further extended by the Trial court to enable the Appellants to prefer the present Appeal by subsequent Orders and therefore, it may be further continued during the pendency of the said Suit. He drew my attention to Order dated 27th November, 2020 passed in Writ Petition (Stamp) No.5802 of 2020 wherein, this Court has directed the Trial Court to make an endeavour to dispose off the said Suit preferably within a period of one year from 27th November, 2020. He submitted that, as per the said Order, the Trial Court was supposed to decide the said Suit on or before November, 2021 and in that event, the Trial Court would have continued with the Order of *status-quo* which is running in favour of the Appellants since January, 2012.

During the course of arguments, Mr. Tripathi fairly admitted the fact that, no medical documents thereby supporting the fact that John Sequeira (deceased) was in fact suffering from *partial dementia* have been produced on record by the Appellants. He further fairly admitted that, the Appellants are not in possession of the Suit property as of today.

He therefore, prayed that, the impugned Order passed by the Trial Court may be set aside and the Order of *status-quo* granted by the Trial Court dated 31st January, 2012 be continued during the pendency of the said Suit.

11 Mr. Tulzapurkar, learned Senior counsel for the Respondent Nos.1A to 1G vehemently opposed the Appeal and submitted that, in view of Rule 3A of Order 39 of the CPC, it was necessary for the Trial Court to make an endeavour to finally dispose of the said Application filed below Exh-5 within thirty days from the date on which the injunction was granted. However, the said Order of 31st January, 2012 continued for a period of more than 9 years thereby, causing infraction of Rule 3A of Order 39 of the CPC. He submitted that, merely because the *status-quo* Order was in force for a pretty long period of about 9 years, it cannot be a ground for its continuation without there being a reasoned Order, as contemplated under Rule 3A of Order 39 of the CPC.

He drew my attention to the various documents on record including notices issued by the Income Tax Department to the family

members of Pupala, wherein the name of purchaser of Suit property has been mentioned as '*Dayalal Chhaganlal Acharya*' of Bombay. He submitted that, the Appellants were and are not in possession of the Suit property. That, the Respondent Nos.1A to 1G have already created third party rights in favour of Respondent No.47 in the year 2004 itself and therefore, there is no purpose in directing *status-quo* with respect to the Suit property as of today. He submitted that, there are no merits in the Appeal and the same may be dismissed.

12 Mr. Tamboli in addition to adopting the arguments advanced by Mr. Tulzapurkar, asserted before this Court that, his clients have entered into Indentures of Lease with Respondent Nos.1A to 1G in the year 2004 and his clients are in possession of the Suit property to the extent, as more specifically mentioned in the Indentures of Lease dated 29th September, 2004 and 25th November, 2004. He also submitted that, there are no merits in the Appeal and the same may be dismissed.

13 At this stage a useful reference can be made to the decision of the Hon'ble the Supreme Court in the case of *Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (Dead) Through LRs.* reported in (2012) 5 SCC 370, wherein it has been held that, the person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

It is further enunciated that, ordinarily, three main principles govern the grant or refusal of injunction; (a) *prima facie* case; (b) balance of convenience; and (c) irreparable injury, which guide the court in this regard. In the broad category of *prima facie* case, it is imperative for the court to carefully analyse the pleadings and the documents on record and only on that basis the court must be governed by the *prima facie* case.

14 At the outset, it is to be noted here that, from a bare perusal of pleadings from the plaint coupled with the submissions made by the learned counsel for the Appellants, it can be clearly discerned that, the predecessor-in-title of the Appellants i.e. John Sequeira (deceased) and the Appellants, at least from October, 1965 were and are not in physical possession of the Suit property. The fact emerges from the pleadings, that John Sequeira (deceased) purchased Suit property of 332 acres and 35 and $\frac{1}{4}$ gunthas (ares) of land for a valuable consideration of Rs.3 lakhs in July, 1949 was not told by him even to his wife (Original Plaintiff No.1) till his alleged accident in the year 1950, appears to be against the normal behaviour and conduct of a man of common prudence. This is particularly so, in view of the pleading of the Appellants that, John Sequeira (deceased) was in the business of sale and purchase of landed properties and did not take any steps in recording/mutating his name in Revenue Records till his alleged accident in the year 1950 also appears to be improbable.

15 The theory of *partial dementia/retrograde amnesia* adopted by

the Appellants, appears to be doubtful and has been put up only to overcome the inordinate delay in filing the present Suit. The pleading of the Appellants that, the Appellant No.2 had been to the office of Sub-Registrar of Assurances, Mumbai in February, 2009 for taking search in the records and indices to ascertain whether a document bearing Registration No.3517 of 1949 of a property situated at Ambernath, in the name of one Mr. Vasanji Lalji and then spotted the name of John Sequeira (deceased) in the Registration List Book of 1949 also appears to be dubious. The Appellant No.2 while leading evidence on the point of preliminary issue (Exh-32) has specifically admitted that, "*he does not know the person namely Vasanji Lalji and he does not have any property at Ambernath*". The Trial Court has observed that, these facts *prima facie* shows that, the Plaintiff has made this story only to explain huge long standing delay of 62 years and only to create cause of action to file this Suit. There is no reason to have any different opinion than what has been recorded by the Trial Court in para No.34 of the impugned Order.

16 To substantiate the claim of '*partial dementia/retrograde amnesia*' allegedly suffered by John Sequeira (deceased), the Appellants have not produced any medical documents on record. As noted earlier, even the learned counsel for the Appellants during his arguments has also conceded to the said fact of non-production of medical documents supporting the said fact.

17 The issue pertaining to the genuineness of either of the documents i.e. the documents of Appellants and Respondent Nos.1A to 1G is pending for final adjudication before the Trial Court and therefore it will not be appropriate to deal with and/or dwell upon the said point at this stage, to record finding on it.

 However, the record produced before me indicates that, after Dayalal Chhaganlal purchased suit property from the members of Pupala family by Deed of Conveyance dated 14th June, 1949, the Income Tax Officer of C-I Ward, Bombay issued notices under Section 46(5A) of the Indian Income Tax Act, 1922 to the members of Pupala family, calling upon them to pay to the Income Tax office necessary taxes/amounts due and payable by them from Dayalal Chhaganlal Acharya (deceased). The said notices are at Exh-241 on the record of Trial Court. In view thereof, prima facie a safe inference can be drawn that surname of Dayalal Chhaganlal was 'Acharya', the predecessor-in-title of Respondent Nos.2A to 2D, who had purchased the suit property from the members of Pupala family.

18 Record reveals that, though it is claimed by the Appellants that John Sequeira (deceased) suffered severe accident in the year 1950, which handicapped him physically and caused partial dementia/retrograde amnesia and in the year 1960 he further suffered paralytic stroke which severally affected his speech and memory, the Respondents have brought on record evidence from which it can be discerned that, John Sequeira

(deceased) was actively participating in business even after 1950 and had taken active role in every activity of his life for about 45 years till his demise. It appears that, John Sequeira (deceased) had appeared in various Court proceedings after 1950. He was also one of the partners of his family partnership business in which he was having 40% of shares. It thus appears that, John Sequeira (deceased) was not physically handicapped and was transacting business in regular course and was also attending litigation.

Record further reveals that, after the suit property was transferred in favour of predecessor of Respondent Nos.1A to 1G by Dayalal Chhaganlal Acharya (deceased) in the year 1965, Mutation Entry No.190 has been recorded by the Revenue Authority in that behalf. Between the years 1970 to 1990 various parts of the suit property were acquired under the Land Acquisition Act. That, notices were issued and awards were passed in the name of Respondent Nos.1A to 1G i.e. the legal heirs of Kantilal Sonawala. Record further discloses that, there were about 234 cases filed by several persons claiming to be protected tenants before the Agricultural Lands Tribunal, Thane and the said proceedings were defended by Kantilal Sonawala. The Respondent Nos.1A to 1G have created third party interest in favour of Respondent No.47 in the year 2004 by executing Indentures in that behalf.

19 As far as the contention of the learned counsel for the Appellants that order directing to maintain status-quo was in force for more

than 9 years and the same needs to be continued during the pendency of the said suit is concerned, the same cannot be accepted for the reason that, it may amount to causing infraction of Rule 3A of Order 39 of the CPC. I am therefore in agreement with the submissions of the learned senior counsel for the Respondent Nos.1A to 1G in that behalf, as has been recorded in paragraph No.11 hereinabove to that extent.

20 A corollary of the aforesaid deliberation is that, no *prima facie* case has been made out by the Appellants to grant injunction in their favour. Balance of convenience also does not lie in favour of the Appellants. No irreparable loss or injury would cause to the Appellants if injunction is not granted in their favour.

I find no merits in the Appeal. Appeal is accordingly dismissed.

21 In view of dismissal of Appeal itself, nothing survives in I.A. No.2253 of 2021 and the same is also disposed off.

MANOJ R
TANDALE

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(A.S. GADKARI, J.)