

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.34 OF 2020

Ashok Dasharath Rana .. Applicant
Versus
Shoeb Mohammed Taj Mohammed Shaikh .. Respondent

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Mr.Amrut Joshi i/b Mr.Suyash Gadre for the Applicant
Mr.Rohan Cama i/b Ms.Sapana Rachure for the Respondent
No.4.

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CORAM: BHARATI DANGRE, J.
DATED : 4th OCTOBER, 2021

P.C:-

1. The present application is filed under Section 24 of the Code of Civil Procedure, 1908 (for short, “**the Code**”) read with Section 13 of the Letters Patent Act, 1865 and direction is sought to transfer the Special Civil Suit No.737 of 2019 filed by the Applicant before the Court of Civil Judge, Senior Division, Thane to this Court and try the same as if it is filed on the original side of this Court.

2. Heard Mr.Amrut Joshi appearing for the Applicant and Mr.Rohan Cama appearing for the Respondent.

The Applicant is the original plaintiff, who has filed a Special Civil Suit against the Respondents, inter alia, for a declaration that the Deed of Confirmation dated 07/03/2011

entered into between the plaintiff and respondent No.1 as regards the suit premises being flat No.002, admeasuring 26.39 sq.mtrs. on the ground floor of Wing B of Kohinoor Apartment 'G' Typle located in the Revenue village Ghodbunder, Mira Road (East), Thane is valid and binding upon all the parties to the suit. A permanent injunction is sought for restraining the defendants or their agents, servants, assignees or any other person claiming through or under them from disturbing the possession of the plaintiff. In the alternative of the aforesaid relief, it is prayed that defendant No.1 shall be directed to return to the plaintiff a sum of Rs.5,00,000/- alongwith 18% interest thereon till its realisation. Damages to the tune of Rs.10,00,000/- are also sought for the loss suffered and the mental agony caused to the plaintiff. The plaint of the said suit is placed on record and from its perusal it is apparent that defendant No.4 to the said suit is a partnership firm.

3. It is apparent from reading of the plaint that defendant No.11 approached the plaintiff and represented that he is lawful owner of the suit premises and showed his willingness to offer the premises on ownership basis. The plaintiff on being so represented, agreed to purchase all the right, title and interest of defendant No.1 in the suit premises and accordingly, an agreement to sale was executed. It was agreed that defendant No.1 would sell his right, title and interest to the plaintiff for a consideration of Rs.5,00,000/- to be payable by the plaintiff to defendant No.1 and the manner of payment was set out in the agreement to sale dated 02/07/2004. Upon

the payment being effected, it was agreed that defendant No.1 shall hand over quite and peaceful possession to the plaintiff. However, since the plaintiff faced financial loss in the business, he was unable to perform his part of contract, but it is his case that defendant No.1, in good faith, granted some time. The case set out in the plaint is to the effect that the plaintiff, however, paid the entire amount though the agreement to sell could not be registered and he persisted with defendant No.1, subsequent to which a deed of confirmation on 07/03/2011 was executed. The plaint specifically asserts that for registration of the same, the plaintiff paid requisite stamp duty considering the market value of the suit premises as Rs.5,00,000/- and the said document can very well be described as 'Conveyance'.

4. Defendant No.4 filed a suit bearing No.461 of 2010 before this Court alleging breach of trust and forgery against his employees, being defendant Nos.1 to 3 in the suit of the plaintiff. The plaintiff alleges that he came to know about the said proceedings when he received a notice from the Court Receiver, High Court, Mumbai on 22/09/2017 and 12/10/2017, directing him to remain present before this Court.

In suit No.461 of 2010, the plaintiff therein took out the Notice of Motion vide No.395 of 2012, seeking appointment of Court Receiver on the properties alleged to have been sold by defendant Nos.1 to 3 from the siphoned funds of the plaintiff therein and accordingly, this Court allowed the Notice of Motion and permitted the Court Receiver to take possession of the suit premises by an order dated 13/04/2016. It is at this

point of time, the applicant gathered knowledge that defendant Nos.1 to 3 are charged for having siphoned of the funds of defendant No.4 and the property in respect of which a deed of conveyance was executed between the applicant/plaintiff in suit No.737 of 2019 is the property purchased out of the said money. The claim of the applicant is that he tried his level best to seek inspection of the title documents, but for some reasons, he was kept away from the same and he appeared before the Court Receiver and he voluntarily surrendered his possession to the Court Receiver, who took the possession of the suit premises.

5. The applicant/plaintiff sought intervention in suit No.461 of 2010 filed by respondent No.4/defendant No.4 and also sought injunction, but the Chamber Summons No.1280 of 2018 filed by him was dismissed with an observation that there is no *prima facie* deed of conveyance in favour of the plaintiff, which would establish his right, title and interest in the suit premises. However, leave was granted to him to file independent proceedings to establish his claim and, therefore, he filed suit in the year 2019. Pertinent to note that the applicant also preferred an Appeal (L) No.83 of 2019, being aggrieved by the order refusing his intervention/impleadment in suit No.461 of 2010, which also came to be dismissed by the Division Bench of this Court. Against the said order, the applicant approached the Hon'ble Supreme Court, but the order passed by the Division Bench of this Court stood confirmed. The applicant/plaintiff was, however, granted liberty to pursue his independent remedy. The aforesaid

development prompted him to institute the suit on 25/09/2019, which is registered as S.C.Suit No.737 of 2019.

6. By the present application, the applicant seeks transfer of the said suit to this Court where Civil Suit No.461 of 2010 instituted by respondent No.4 is pending. When the copy of the said suit, which is pending on the original side of this Court is perused, it is seen that the said suit is filed against the defendants for recovery of Rs.3,00,43,514/- alongwith interest at the rate of 8% p.a. plus damages with the allegation that defendant No.2- Shoeb Mohammed, who was working as Chief Accountant, has committed criminal breach of trust and, *inter alia*, forged 433 cheques in connivance with his wife i.e. defendant No.3 and the brother-in-law, defendant No.4 and siphoned off huge amount from the account of the plaintiff. It is alleged that out of the said siphoned amount, 16 properties were purchased. Most of the properties are in the name of defendant No.3 and it included flat No.002, admeasuring 26.39 sq.mtrs. on the ground floor of Wing B of Kohinoor Apartment 'G' Typle located in the Revenue village Ghodbunder, Mira Road (East), Thane, which is the suit property in the plaint of the plaintiff/applicant. Since the subject matter of the said suit is the property, which is claimed by the present applicant as a property purchased from the same person i.e. Shoeb, Chief Accountant of Edit-II Production and, since he claims that he is a *bona fide* purchaser, unaware of the alleged siphoning by his vendor, on an earlier attempt to seek impleadment in the suit No.461 of 2010, he has miserably failed. As far as suit No.461 of 2010 is concerned, it is for recovery of amount, which was

allegedly siphoned of by defendant Nos.2 to 4 from the account of the plaintiff and the conspectus of the consideration in the said suit is completely distinct from the suit instituted by the plaintiff/applicant by which he is seeking a declaration that a deed of confirmation executed between him and Shoeb Mohammed Taj Mohammed Shaikh is valid and binding upon all the parties to the suit.

7. The fact remains that even the impleadment of the applicant in suit No.461 of 2010 was denied and the said order is upheld by the Hon'ble Apex Court. In the said suit, the Court Receiver was appointed under the orders of this Court and he has taken possession of all the properties, which were alleged to be purchased from the money siphoned by Shoeb Mohammed Taj Mohammed Shaikh and the other defendants. When the prayer of the applicant to intervene in the suit filed by respondent No.4 is declined on the premise that he is not a necessary party to the suit and after recording that it is not the case that the title of the disputed property came to be conveyed to the applicant in pursuance of the agreement for sale and by recording that the deed of confirmation dated 07/03/2011, which appeared to be executed by Mrs.Mumtaz Shaikh, defendant No.3, who has sworn an affidavit that the property shall not be disposed and/or third party right is created and which statement was accepted by the Court in the suit, the Division Bench has rendered a finding that the claim of the applicant of acquisition of ownership over the disputed property does not qualify as a definite claim based on documents of unimpeachable evidentiary value and a finding has been rendered that the claim of having acquired ownership

over the disputed property, in the face of the documents i.e. agreement for sale dated 02/07/2004 and deed of confirmation dated 07/03/2011 is, *ex facie*, unsustainable.

8. In the wake of the aforesaid observations, since there is no ground made out to transfer the said suit filed by the applicant to the original side of this Court where the suit filed by respondent No.4 against its employees for recovery of amount is pending, since the suits will have to be tried on distinct issues, with no commonality amongst them and the property which the applicant claimed to be entitled to is only one of the properties involved in suit No.461 of 2010.

The application, therefore, deserves a rejection and is rejected.

(SMT. BHARATI DANGRE, J.)