

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 628 OF 2022
WITH
INTERIM APPLICATION NO. 9853 OF 2022
IN
APPEAL FROM ORDER NO. 628 OF 2022

Hawaladar Shivmurat Singh and Anr. ...Appellants
V/s.
Umeshchand Mahendra Sahani ...Respondent

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CHAVAN

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Mr. Amrendra Jha for the Appellants.
Mr. S.L. Mhatre, for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 12 AUGUST 2022

P.C.

. By consent of parties, the appeal is taken up for final disposal.

2. By this appeal, the appellants-plaintiffs, are challenging the order dated 24.02.2022 passed by the learned City Civil Court at Mumbai in Notice of Motion No. 124 of 2020 in S.C. Suit No. 2876 of 2019. By the impugned order, the Notice of Motion has been dismissed.

3. The Appellants have filed the aforesaid suit for declaration

and injunction etc in respect of Room No. 67-B, on ground floor, Ghasletwala Chawl, 60/64 Keshevrao Khadye Road, Saat Rasta, Jacob Circle, Mumbai. According to the Appellant No.1, he has entered into an agreement for sale of suit property with the Respondent defendant on 12.06.2019 for a consideration of Rs.75 lakhs. Indisputably, Appellant No.1 has received an amount of Rs. 35 lakhs from the Respondent. The material case made out is that the Respondent fraudulently got prepared a notarised sale deed, mentioning the consideration of Rs.35 lakhs, when in fact the consideration was agreed to be Rs.75 lakhs. He, therefore, sought a declaration about the alleged sale deed executed on 12.06.2019 being declared null and void and also sought injunction restraining the Respondent-Defendant from interfering with the possession of the Appellants over the suit property and/or from creating third party interest in the same.

4. The Respondent resisted the Notice of Motion claiming that the Plaintiff No.1 is the original tenant of one Fatubai Ebrahim Hariyanawalla. It is submitted that the entire building is taken for redevelopment by M/s. Parekh Constructions and the Appellant No.1 was paid Rs.35 lakhs for transfer of tenancy with the consent of the landlord.

5. The learned Trial Court has found that there is suppression of material fact and the Appellants have not approached the Court with clean hand. In that view of the matter, the Notice of

Motion is dismissed.

6. The order dated 24.02.2020 is sought to be challenged by filing the Appeal from Order in January 2021 without any application for condonation of delay. Be that as it may. I do not propose to go into the said aspect of limitation, as the office has not raised any objection on that count.

7. I have heard the learned counsel for the parties. Perused record.

8. It can be seen that Appellant No.1 is only a tenant and the case made out by the Respondent is that the tenancy rights have been transferred on consideration of Rs.35 lakhs. The receipt of Rs.35 lakhs is not disputed on behalf of the Appellants. According to the Respondent the tenancy rights were transferred with the consent of the landlord.

9. A perusal of the impugned order shows that the Appellants were granted liberty to redeposit Rs.35 lakhs which has not been availed of. In any event, the Trial Court is right in observing that there is clear suppression about the transfer of the tenancy rights and the Appellants have not approached the court with clean hands. In that view of the matter, no case for interference is made out.

The appeal is accordingly dismissed with no order as to costs.

Pending Interim Application is disposed of.

C.V. BHADANG, J.