

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.240 OF 2022
ALONG WITH
INTERIM APPLICATION NO.1722 OF 2022

Radheshyam Jokhan Gupta] ... Appellant

Vs.

Pravin Gambhirdas Parikh & Ors.] ... Respondents

...

Mr. Vaibhav Sugdare i/b Mr. Om Prakash Singh for the appellant.

Mr. Simil Purohit with Mr. Gauraj Shah i/b Gajria & Co. for respondent No.4.

Mr. Rubin Vakil with Mr. Manish Doshi and Ms. Esha Malik i/b Vimadalal & Co. for respondent Nos.5 and 6.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 28TH APRIL, 2022.

P.C. :-

1. Heard Mr. Sugdare, the learned counsel for the appellant, Mr. Purohit, the learned counsel for respondent No.4 and Mr. Vakil, the learned counsel for respondent Nos.5 and 6.

2. The present appeal is filed being aggrieved by the rejection of the notice of motion at the hands of the Bombay City Civil Court in Special Civil Suit (St.) No.6103 of 2020 instituted by the plaintiff, who is the appellant herein.

3. On hearing the learned counsel for the parties and on perusal of the necessary documents, including the plaint as well as the impugned order, it can be discerned that the plaintiff filed a special civil suit, seeking a declaration to the effect that the agreements, documents, deeds executed between the defendants *inter-se* and/or purportedly by the plaintiff in favour of one Madhukar Nalge, the predecessor of defendant No.2, are fraudulent, forged, fabricated, illegal and null and void and not binding upon the plaintiff.

4. The aforesaid prayer is made in the wake of the following sequence of events and, before appreciating the impugned order, it is necessary to barely refer to the said sequence of events.

One Dharshi Hirji Vikamsey was the owner of Plot No.34 of Town Planning Scheme No.1 of Ghatkopar bearing Survey Nos.232(P), 257(P) and 259(P) of Village Ghatkopar, Mumbai Suburban District, lying being and situate at Hingwala Lane, Ghatkopar (East), Mumbai, along with the building standing thereon known as 'Jayant Villa'.

5. On 05/11/1981, the said Dharshi Vikamsey executed an

agreement in favour of the plaintiff for sale of the suit shop being Shop No.10 located in the said building. It is not in dispute that the said agreement is not registered. On 28/02/1984, the plaintiff sold the suit shop to said Madhukar Nalge, the predecessor of defendant No.2 and passed over the original agreement dated 05/11/1981 to him. On 24/04/1986, said Madhukar Nalge sold and transferred the said shop to defendant No.3 under a duly stamped and registered agreement and even the stamp duty was also paid on the said instrument.

6. On 18/12/1995, the original owner of the said plot granted it's no objection to defendant No.3 for sale/transfer of the suit shop to defendant No.4-Hiten Mehta. An agreement was duly executed in favour of defendant No.4 qua shop No.10 on 18/12/1995 by paying appropriate stamp duty, which is depicted in the receipt issued to that effect.

7. It is in the backdrop of these events, the plaintiff instituted the suit in the year 2020 and, to be precise, on 07/12/2020, seeking a declaration that all those subsequent deals between the defendants *inter-se* and even the one executed by the plaintiff himself in favour of said Madhukar Nalge on 28/02/1984 is forged, fabricated, etc. The pleadings to that effect are set out in paragraph 14 of the plaint, where it is pleaded that the plaintiff has not received any consideration as mentioned in the said agreement and, therefore, on the face of it, the said agreement is illegal and

null and void. It is also pleaded that from the said agreement, it can be seen that the same has been purportedly signed by the plaintiff, but the signature is apparently forged and fabricated one.

8. In any case, the burden lies on the plaintiff to make his case good by adducing sufficient evidence during the course of trial.

9. As far as the prayer for injunction is concerned, on perusal of the impugned order passed on the notice of motion, it can be seen that the learned Judge has found the title of the plaintiff doubtful and recorded that the document, from which he claims his title itself is an unregistered document and it cannot be said that he has become owner of the suit premises. Further, recording that defendant No.4's long-drawn possession has been *prima facie* established by producing the licence issued under the Shop & Establishment Act, the telephone bill and the notice issued by the Corporation. Apart from this, another important factor, which found mention in the impugned order, while refusing relief, is that the original land owner, defendant No.5 has executed a registered deed for alternative accommodation in favour of defendant No.4 for reconstruction period, thereby accepting his possession in the suit property.

10. In the wake of the aforesaid circumstances, creating cloud over the title of the plaintiff and particularly, when the plaintiff has failed to seek declaration of his title in respect of the said shop, the

learned Judge by recording that there is no *prima facie* case in favour of the plaintiff, refused to grant injunction by rejecting the notice of motion.

11. In the sequence of events, the observations made by the learned Judge in the impugned order cannot be said to be perverse and by the order passed on the basis of the facts and circumstances brought before the learned Judge, the notice of motion is rejected.

12. Finding no legal infirmity in the impugned order, the same is upheld and the appeal is dismissed.

13. In view of the dismissal of the appeal, the interim application does not survive and the same is dismissed as such.

[SMT. BHARATI DANGRE, J.]