

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.591 OF 2022

Sharad S. Ruia

...Appellant

Versus

Joseph J. Mudaliar and Ors.

...Respondents

....

Mr. Pradeep Thorat with Mr. Uzair Kazi and Ms Dhanashree Hublikar i/b.
M/s. YMK Legal for the Appellant.

Mr. S.M. Khaire for Respondent Nos.1 to 4.

Ms Tanaya Goswami, AGP for Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 17th JUNE, 2022.

P.C.:-

1. The challenge in this appeal is to the order dated 02/06/2022 whereby the learned Judge, City Civil Court, Bombay, Borivali Division at Dindoshi (Goregaon) partly allowed the ad-interim relief in Notice of Motion No.1275 of 2022 filed by the Respondents -Plaintiffs in S.C. Suit No.834 of 2022.

2. By the impugned order the learned Judge has restrained the Appellant (hereinafter referred to as 'Defendant No.2') from entering into or mutating his name in the Government Revenue Record of Survey No.147/11 corresponding to CTS No.2331 and from dispossessing the

Respondent Nos.1 to 4 (hereinafter referred to as 'the Plaintiffs') and taking forcible possession of the suit property under Survey No.147/11, CTS No.2331 and Survey No.147, Hissa No.10, corresponding to CTS No.2332.

3. During the pendency of the suit, the name of the Defendant No.2 has been mutated in the revenue records. Hence, ad-interim relief as prayed in prayer clause (i) is rendered infructuous. Mr. Thorat submits that Defendant No.2 is not concerned with CTS No.2331 and that the challenge in this appeal is restricted to the later part of the order which restrains Defendant No.2 from interfering with Plaintiffs' possession in respect of CTS No.2332 (hereinafter referred to as 'the suit property').

4. The Plaintiffs have sought interim relief on the ground that they are the owners in possession of CTS No.2332 by virtue of registered agreement for sale dated 29/08/2006 and sale deed dated 03/07/2015. The Plaintiffs claim that Defendant No.2 has no right to the property. The Plaintiffs have alleged that Defendant No.2 is trying to get his name entered into Revenue Records on the basis of the forged and fabricated documents with an intention of defeating their rights in respect of the suit property.

5. It is pertinent to note that Defendant No.2 has placed on

record registered deed of sale dated 09/03/2020 executed in his favour by the Plaintiffs through their constituted attorney. The copy of the power of attorney, which is placed on record, reveals that the Plaintiffs had authorised their attorney to enter into sale transaction and further to delegate such powers on any other person. It is on the basis of this power of attorney that the sale deed has been executed in favour of Defendant No.2. Defendant No.2 had sought to enter his name in the Revenue Records on the basis of the said registered sale deed. The Plaintiffs had appeared before the Revenue Authority and were aware of the execution of the sale deed in favour of Defendant No.2, despite which there is no challenge to the said sale deed. The relief is to restrain Defendant No.2 from entering or mutating the name of Defendant No.2 in the Government Revenue Records and further a declaration that Defendant No.2 has no right to the said suit property.

6. The records further reveal that Defendant No.2 has entered into Leave and License Agreement dated 22/05/2020 with Maharashtra State Road Development Corporation (MSRDC), which is a Company fully owned by the Government of Maharashtra and registered under the Companies Act, 1956. By virtue of the said Leave and License Agreement, the Defendant No.2 has handed over possession of the suit property under

Survey No.2332 to MSRDC. By letter dated 24/05/2022 MSRDC has acknowledged having taken possession of Survey No.147/10 CTS 2332. Letter dated 06/05/2020 also prima facie reveals that MSRDC has been paying rent to M/s. Park Developers, the Firm of Defendant No.2. The Plaintiffs have thus prima facie failed to prove that they are in possession of the suit property. The finding that the Plaintiffs are in possession of the suit property is not based on material on record. Hence, the impugned order cannot be sustained.

7. Under the circumstances and in view of discussion (supra) the appeal is allowed. The impugned order is set aside.

8. In view of disposal of the appeal, pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)