

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 539 OF 2021
WITH
INTERIM APPLICATION NO. 4383 OF 2021**

MANGIBAI SUKHLAL JAIN

D/O. PHOOLCHAND MADRECHA

**} APPELLANT/
ORIG. PLAINTIFF**

V/S.

GRACE WILLIAM D'SOUZA

AND ORS.

**} RESPONDENTS/
ORIG. DEFENDANTS**

*** * * ***

Mr. Ashok M. Saraogi, Advocate for the appellant.

**Mr. Vishwajeet S. Kapse, alongwith Mr. Freddy K.
Bhadha, Advocate for the respondents no.1 to 3.**

Coram : Sandeep K. Shinde, J.

Wednesday, 16th February, 2022.

P.C. :

- 1)** Heard learned Counsel for the parties.
- 2)** Apprehending interference in the lawful possession in the suit Shop No.2, plaintiff instituted the suit for seeking relief of perpetual injunction against the defendants, that they shall not cause obstruction to her

peaceful possession in the suit shop situated at Santacruz (East), Mumbai-400 055.

3) Pending suit, application moved by the plaintiff for seeking relief of temporary injunction was rejected on 1st October, 2021. That order is challenged in this Appeal from Order under Order 43 Rule 1 Clause (r) read with Section 104 of the Civil Procedure Code.

4) Question that falls for consideration is, “Whether plaintiff has prima-facie established her possession in the suit shop and whether the impugned order calls for interference ?”

5) Plaintiff asserts her lawful possession in the suit shop through her deceased father, Fulchand Madrecha, who was the tenant therein.

6) In support of suit claim, plaintiff, would rely on few documents. Certificate of establishment is one of such documents, which is at Exhibit-A to the plaint. I have perused it. It is of no avail; reason being, this Certificate has been issued in the name of ‘Ms. Manju Sukhlal Jain’, whereas, plaintiff’s name is ‘Mangibai Sukhlal Jain’. Next document is, electricity bill dated 1st November, 2004. In

plaint paragraph-2(f), plaintiff would assert, the electricity meter installed in the suit Shop, stands in the name of her brother, Mohanlal Fulchand. The electricity bill is at Exhibit-B. This piece of evidence also does not help or support the plaintiff's assertion. Reason being, in plaintiff paragraph-2(g), plaintiff pleaded, her brother, Mohanlal Fulchand expired on 21st November, 2008; a copy of his Death Certificate is at Exhibit-C to the plaint. It is a public document and therefore it carries the presumption of correctness. Death Certificate shows, name of Mohanlal's (plaintiff's brother) father was 'Sagarmal Kothari'; whereas, plaintiff claims, she is the daughter of Fulchand Madrecha. When the Court was unable to reconcile the inconsistency in the documents on which plaintiff has founded her claim, Mr. Saraogi, learned Counsel appearing for the appellant submitted that, tenancy in respect of the suit shop was in the name of plaintiff's father, Fulchand and one, Mohanlal. Thus, according to Mr. Saraogi, it was a joint tenancy and plaintiff succeeded the tenancy through her father, Fulchand. Mr. Saraogi, has filed additional Affidavit and for the first time, placed on record, the rent

receipts issued in the name of 'Mohanlal Fulchand'. Curiously, this fact has not been pleaded in the plaint nor rent receipts show 'Mohanlal' and 'Fulchand' were two different persons. Herein, although the plaintiff is claiming the tenancy through her father, Fulchand Madrecha, however, the Death Certificate of plaintiff's brother, shows his surname as 'Kothari' and father's name was 'Sagarmal'. It belies plaintiff's case. As such, all documents relied upon by the plaintiff only leads to infer that, plaintiff has founded her claim of possession on inconsistent and unreliable documents. Therefore, the documents placed on record alongwith the additional Affidavit do not help or further the case of the plaintiff. Additionally, the plaintiff has relied on the Will of her mother. Her mother's name is 'Sosarabai' widow of 'Fulchand Navalram Madrecha'. This document contradicts the Death Certificate of plaintiff's brother, which shows, brother's surname was 'Kothari' and not 'Madrecha'.

7) Thus, taking into consideration, the facts of the case and overview of the documents, I have no hesitation

to hold that, plaintiff has attempted to rely on the documents which were false to her knowledge. Therefore, the documents relied on do not support and/or probablise the plaintiff's alleged possession in the suit shop was through her father, Fulchand. That being the case, I hold that, appellant has not approached the Court with clean hands. For all that reasons, order of the trial Court cannot be faulted with.

8) As a result, the Appeal is dismissed with costs Rs.25,000/- (Rs. Twenty Five Thousand only) which the appellant shall deposit with the High Court Legal Services Committee within two weeks from today.

9) If the cost is not deposited, copy of this order be forwarded to the Collector for its recovery in accordance with the provisions of the Land Revenue Code. Appeal is disposed of.

10) In view of disposal of the Appeal itself, Interim Application No. 4383/2021 does not survive. The same also stands disposed of.