

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 133 / 2019
Alongwith
Civil Application (CAA) No. 22 / 2020
in
Appeal from Order No. 133 / 2019

Mr. Sureshkumar Sohanlal Choradia ... Appellant

Versus

M/s. Bapu Developers and Construction
Private Limited ... Respondent

Mr. Ganesh S. Bhat, Advocate for the Appellant.

CORAM : SANDEEP K. SHINDE, J.
DATE : 16th FEBRUARY, 2022.

P.C.

Heard. Learned Counsel for the Appellant.

1. None appears for the Respondent, although, duly served.
2. Briefly stated facts of the case are that, M/s bapu Developers and Constructions Pvt. Ltd. - Plaintiff, instituted a S.C. Suit No.

752/2016 against the Appellant-Defendant to seek a relief of declaration that Defendant is a trespasser in the suit premises being shop no. 4 situated in building Govind Kunj, Jawaharlal Nehru Road, Mulund (W), Mumbai-80 and for such other consequential reliefs. Plaintiffs' case is that it acquired land bearing plot no. 99 together with building known as Govind Kunj standing thereon situated at J.N. Road, Mulund (W), Mumbai-80 from son of erstwhile owner Mr. Lachmandas Ahuja, under a registered deed of conveyance dated 17th April, 2009. Plaintiff would claim and assert that the Defendant is in illegal occupation and possession of shop no. 4 on ground floor of the building Govind Kunj, situated on said property. Further Plaintiff would assert that although he demanded title documents from the Defendant, evidencing his right to occupy the shop no. 4, Defendant neglected and avoided to disclose his rights therein. On this premise, Plaintiff brought the subject suit, seeking relief of declaration and decree possession of the shop no. 4 in the Govind Kunj Building from the Defendant. Pending suit, Plaintiff moved an application for following reliefs;

- (i) To restrain the defendants from creating third party interest;

- (ii) To direct the defendants to make proportionate payment of outgoings.
- (iii) To appoint receiver;
- (iv) To restrain the defendants from carrying out any structural changes in the suit premises.

3. The learned trial Judge vide order 20th July, 2018 restrained Defendant from creating third party interest in the suit shop. That order is assailed in this appeal under Order-43, Rule-1(r) read with Section 104 of the Code of Civil Procedure.

4. With the assistance of Mr. Bhat, learned Counsel for the Appellant, I have perused the plaint, written statement, deed of conveyance dated 17th April, 2009 and agreement for sale dated 12th June, 1981 vide which the Defendant has purchased the shop no. 4 ad-measuring 260 Sq.ft., on the ground floor of the building 'Govind Kunj', now i.e. New Mangal from Shri. Lachmandas Ahuja. That vide agreement dated 12th June, 1981, Lachmandas H. Ahuja, father of Deepak Lachmandas Ahuja, therein referred to as Developer and

Proprietor of M/s Ahuja Construction & Company, sold shop no. 4 (suit shop) ad-measuring 260 Sq.ft. to the Appellant-Defendant. The said agreement dated 12th June, 1981 executed by Lachmandas Ahuja was subject to Maharashtra Flat Ownership Act (MOFA). It appears from the material on record that the flat purchasers in the building 'Govind Kunj' then developed and constructed by Lachmandas Ahuja, have formed and registered a Co-operative Housing Society on 26th October, 1990. As also Lachmandas Ahuja, a Promoter/Developer agreed to convey the plot no. 99 and building thereon in favour of Co-operative Housing Society his statutory obligation under the MOFA. Instead of discharging the statutory obligation, son of Lachmandas Ahuja, Shri. Deepak Ahuja executed a conveyance of the plot no. 99 together with the building standing thereon in favour of M/s Bapu Developer Construction Pvt. Ltd. (a plaintiff herein).

5. The documentary evidence on record and particularly the agreement dated 12th June, 1981 executed by Lachmandas H. Ahuja, Proprietor of Ahuja Constructions and Co. in favour of the Appellant-Defendant in respect of shop no. 4 in the building 'Govind

Kunj' establishes Defendants' possession in shop no. 4 is legal and not that of trespasser, as alleged by the Plaintiff. In consideration of these facts, in my view the learned trial Court ought not to have restrained the Appellant-Defendant from creating third party interest in the suit shop.

6. For all these reasons, the impugned order is quashed and set aside. Appeal is allowed and disposed of alongwith Civil Application.

(SANDEEP K. SHINDE, J.)

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