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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COURT RECEIVER'S REPORT NO.370 OF 2021
IN
INTERIM APPLICATION NO.1997 OF 2021
IN
COMS. SUIT NO.330 OF 2021

Usha S. Vishwasrao & Anr.

...Applicants/
Plaintiffs

Versus

Ravikant Salaskar & Ors.

...Defendants

Mr. Shripad Murthy with Clarissa Miranda i/b. Abhishek Patil
for Applicants / Plaintiffs.

None for Defendants.

Ms. Rekha Rane, 2nd Asstt. to Court Receiver is present.

CORAM : R.I. CHAGLA J.
DATE : 10TH JANUARY, 2022
(THROUGH V.C.)

ORDER :

1. By this Court Receiver's Report, the directions have been sought for quantum of monthly royalty for the suit flat no.16 to be fixed by this Court.

2. The learned Counsel for the Applicants / Plaintiffs

has referred to order dated 26th August, 2021. This Court had by the said order recorded the statement of the learned Counsel for the 1st and 2nd Defendant's that the Defendants are submitting to an order in terms of prayer clause (a) of the Interim Application (L) No.15699 of 2021 which is quoted. However, the last two words of the prayer in the Interim Application viz. "without any royalty" has not been quoted. He has submitted that the application was for appointment of Court Receiver and Plaintiff as an agent of the Court Receiver without any royalty. This Court had by the said order recorded that no order for royalty has been made at this stage and the rival submissions of both sides will be considered at a later date. It was further noted by this Court that, the Defendant Nos.1 and 2 had claimed to be owners of the fifth floor flat in question. It was recorded that this is not a Suit on title but it is simplicitor a Suit under Section 6 of the Specific Relief Act.

3. The learned Counsel for Defendant Nos.1 and 2 had stated that the statement of the learned Advocate appearing for Defendant Nos.1 and 2 which was recorded in the said order was without prejudice to the 1st and 2nd Defendant's rights to file appropriate proceedings in a Court of competent

jurisdiction on title and for possession and other reliefs. This statement was noted and accepted.

4. The Court Receiver was accordingly directed to take possession of subject flat 16, 5th floor, Philipa CHSL, Andheri (East), Mumbai 400 069 and affix his board on the outer door of the premises or on the outer wall next to the front door of the premises. The Court Receiver was to put the Plaintiffs into the possession of the flat. The Court Receiver was directed to make a report by 20th September, 2021 seeking directions on the question of the royalty. It was made clear in the said order that in the report some assessment of the physical carpet area of the flat and the rental rates in the vicinity as also recommendations by the Court Receiver shall be provided. Whether or not there can be an order of royalty at all will also have to be considered at the time of the report.

5. The Court Receiver has thereafter complied with the directions of this Court. The Court Receiver has appointed valuer M/s. Nadkarni and Company who has provided the valuation of the royalty in its report placed before this Court wherein royalty has been suggested at an amount of

Rs.64,000/-.

6. The learned Counsel for the Plaintiffs has submitted that the subject flat No.16 belonged to the Plaintiffs for almost a period of 19 years. The Suit had been filed for restoration of possession of the subject flat 16 which was forcibly taken by Defendant Nos.1 and 2 on 7th July, 2021 by holding that the act of forcible dispossession of the Suit flat belonging to the Plaintiff and his family by Defendant Nos.1 and 2 was illegal and required to be restored. The Interim Application is taken out in the Suit for appointment of Court Receiver and to appoint the Plaintiffs as agent of the Court Receiver and for payment of royalty. The Interim Application was allowed by the order dated 26th August, 2021. This Court had at that stage made no order for royalty. The Court Receiver has accordingly taken possession of the subject flat No.16 and has put the Plaintiffs in possession of the subject flat.

7. The learned Counsel appearing for the Plaintiffs has taken this Court through the various photographs which have been annexed to the Affidavit in Rejoinder as well as to the Court Receiver's Report which clearly shows that the lock has

been broken and there has been forcible entry in the subject flat No.16.

8. The learned Counsel appearing for the Plaintiff has further submitted that it is in fact the statement of the learned Counsel appearing for the Defendant Nos.1 and 2 that they shall file appropriate proceedings in the Court of competent jurisdiction on title and for possession and other reliefs. He has submitted that in view of the Plaintiffs being put in possession of their own flat, the royalty should not be paid.

9. Having considered the submissions, it does appear from the order dated 26th August, 2021 that it was recorded that the Suit is not for title but is simplicitor a suit filed under Section 6 of the Specific Relief Act. The statement of the learned Advocate appearing for the Defendant Nos.1 and 2 which was recorded is stated by the learned Counsel for Defendant Nos.1 and 2 to be without prejudice to their rights of Defendant Nos.1 and 2 to file appropriate proceedings in a Court of competent jurisdiction on title and for possession and other reliefs. The statement was noted and accepted.

10. It is to be noted that the Court Receiver has taken possession of the subject flat No.16 and has put the Plaintiffs into possession of the subject flat by affixing Court Receiver's board on the outer wall next to the front door of the premises. In view of the directions of the Court on 26th August, 2021 the Court Receiver has determined royalty through appointed valuer M/s. Nadkarni and Company and has tendered valuation report dated 11th September, 2021 wherein the royalty is determined Rs.64,000/- p.m.

11. Having considered the submissions of the learned Counsel appearing for the Plaintiffs on the question of whether royalty has to be paid and particularly the noting fact that the Plaintiffs had claimed restoration of the subject flat which belonged to them for almost a period of 19 years in a Suit which this Court had recorded was a simplicitor Suit filed under Section 6 of the Specific Relief Act, it would be appropriate that the Plaintiffs are not required to pay the royalty. This is without prejudice to the 1st and 2nd Defendant's right to file appropriate proceedings in a Court of competent jurisdiction on title and for possession and other reliefs.

12. The Court Receiver's Report is accordingly disposed of. The cost of the Report is awarded to the Court Receiver at Rs.5,000/- and the Plaintiffs shall pay the cost of the Report to the Court Receiver within one week from today.

13. Court Receiver's Report is disposed of accordingly.

[R.I. CHAGLA J.]