

Sayali Upasani

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

APPEAL FROM ORDER NO. 380 OF 2023

WITH

INTERIM APPLICATION NO. 4613 OF 2023

Jayashtree Prabhakar Pawar

...Appellant/Org.

Plaintiff

Vs.

Mangala Ramesh Lad and Others

...Respondents

/Org. Defendants

Mr.Pramod Bhosale i/b Ms. Devika Nigude, for Appellant.

Mr. Jaydeep Raut a/w Ms. Priyanka Chavan i/b Mr. V. N. Naik and Co., for Respondent No. 1.

Mr. Dhruv Joshi a/w Mrs. Nandini Joshi and Ms. Preeti Agarwal i/b Mr. Harish Joshi and Co., for Respondent No. 4.

CORAM:- N. J. JAMADAR, J.

DATED:-15th JUNE, 2023

ORDER:-

1) This Appeal is directed against an order dated 6th May, 2023, passed by the learned Judge, City Civil Court in Notice of Motion No.4830 of 2022 in Suit No. 1686 of 2022, whereby the Notice of Motion taken out by the appellant/plaintiff seeking grant of interim mandatory injunction directing defendant No. 7-

developer to pay plaintiff transit rent in lieu of the flat No. 3132, Building No. 104, Pant Nagar, Makrand Cooperative Housing Society Ltd., defendant No. 2 (the suit flat), which is under redevelopment, and to hand over the new premises, post redevelopment, to the plaintiff and also to direct the developer-defendant No. 7 to execute all the documents with the plaintiff as a member of defendant No. 2- Society, came to be dismissed.

2) Background facts leading to this Appeal can be stated in brief as under:-

(a) Mr. Gopalrao Jadhav was the father of plaintiff and defendant No. 1. Mr. Gopalrao was the owner of room No. 2996, building No. 100, Pant Nagar, Kaveri Co-operative Housing Society Ltd. After the death of Mr. Gopalrao, the said room No. 2996, which was in the name of Mrs. Pramila Jadhav, the mother of plaintiff and defendant No. 1, was sold and the suit flat was purchased in the name of Mrs. Pramila and defendant No. 1.

(b) Plaintiff asserts, all the funds generated from sale of room No. 2996 were utilised for the purchase of the suit flat and the balance funds were parted with from the joint account of Mrs. Pramila and defendant No. 1. Ms. Pramila, the deceased mother

of plaintiff and defendant No. 1, stayed in the suit flat, along with Mr. Prashant, the son of plaintiff, and his family.

(c) Mrs. Pramila passed away on 28th March, 2021. Thereupon defendant No. 1 approached the plaintiff with an offer to purchase plaintiff's share in the suit flat for a consideration of Rs.45,00,000/-. Defendant No. 1, however, represented to the plaintiff that if conveyance is executed, she would be required to pay the stamp duty. Assuring the plaintiff that a sum of Rs.45,00,000/-, would be paid to her, the defendant No. 1 made the plaintiff to execute a registered release deed dated 11th August, 2021 in favour of the defendant No. 1.

(d) The plaintiff avers the defendant No. 1 failed to pay the amount of Rs.45,00,000/-, as agreed, on one or the other pretext. However, the defendant No. 1 in conversation on Whatssapp admitted that she had agreed to pay Rs.45,00,000/-, to the plaintiff. Eventually, the plaintiff addressed legal notice on 30th May, 2022. In reply thereto, the defendant No. 1 raised false defences. Hence, the plaintiff was constrained to institute the suit, seeking a declaration that the release deed dated 11th August, 2021, was null and void and did not bind the plaintiff, to

restrain the defendant from acting upon the said release deed and disposing, alienating or creating any third party right or interest in the suit flat and also to direct the defendant No. 2- Society not to enter any agreement for permanent alternate accommodation to be allotted in lieu of the suit flat with defendant No. 1, to the exclusion of the plaintiff.

3) In the said suit, the plaintiff took out two Notices of Motion. In Notice of Motion No. 2599 of 2022, the plaintiff prayed for, *inter alia*, temporary injunction restraining the defendants not to act upon the registered release deed, restrain the defendants from alienating or creating any third party right or interest in the suit flat and also for restraining the defendants from entering into the suit flat and interim mandatory injunction directing defendant No. 2- Society not to enter into an agreement for permanent alternate accommodation with defendant No. 1 to the exclusion of the plaintiff.

4) By an order dated 6th May, 2023, the said Notice of Motion came to be partly allowed thereby restraining defendant No. 1 from alienating or creating any third party right or interest in the suit flat except for the purpose of its redevelopment by defendant

No. 2 till decision of the suit or further order, whichever was earlier.

5) The plaintiff also took out instant Notice of Motion No. 4830 of 2022, seeking, *inter alia*, interim mandatory injunction directing the developer-defendant No. 7 to pay the transit rent to the plaintiff, to hand over the permanent alternate accommodation, post redevelopment, and also to execute all the instruments with the plaintiff.

6) By the impugned order, the learned Judge, City Civil Court was persuaded to dismiss the Notice of Motion No. 4830 of 2022.

7) The learned Judge was of the view that the question as to whether the release deed is vitiated by fraud, misrepresentation or undue influence, was a matter for trial. *Prima facie*, title to the suit flat had passed to defendant No. 1 under the registered release deed. The said release deed was also acted upon and defendant No. 1 was admitted as a member of the defendant No. 2- Society. In the circumstances, having regard to the extent of the interest of defendant No. 1 in the suit flat (75%), even if it was assumed that the plaintiff still had 25% interest in the suit flat, in the opinion of the learned Judge, the elements of balance

of convenience and irreparable loss were in favour of the defendant No. 1.

8) Being aggrieved the plaintiff is in Appeal.

9) I have heard Mr. Pramod Bhosale, the learned Counsel for the Appellant, Mr. Jaydeep Raut, the learned Counsel for the respondent No. 1, and Mr. Dhruv Joshi, the learned Counsel for the respondent No. 4, at some length.

10) Mr. Bhosale would urge that City Civil Court committed an error in dismissing the Notice of Motion despite there being adequate material to show that during the lifetime of Mrs. Pramila, the mother of plaintiff and defendant No. 1, the plaintiff's son Prashant has been residing in the suit flat along with his family. It was urged that the learned Judge having recorded a *prima facie* finding that there was material to show that the defendant No. 1 had agreed to pay some amount to the plaintiff in connection with execution of the release deed, could not have left the plaintiff in the lurch. In the least, the City Civil Court could have protected the possession of the plaintiff.

11) Indisputably, the plaintiff executed the registered release deed in favour of the defendant No. 1. The release deed contains a clear recital to the effect that late Pramila had a 50% share in

the suit flat and the plaintiff and defendant No. 1 succeeded to the said 50% undivided interest of late Pramila. There is, *prima facie*, material to show that the defendant No. 1 held the balance $\frac{1}{2}$ undivided interest in the suit flat. What the plaintiff released under the registered release deed was her $\frac{1}{2}$ share in the said undivided interest of late Pramila in favour of the defendant No. 1. The learned Judge, City Civil Court thus recorded a justifiable finding that, in the absence of the release deed, the plaintiff would have 25% and defendant No. 1 75% share in the suit flat.

12) It is true in the plaint an endeavor has been made to assert that the suit flat had been acquired out of the joint family nucleus and defendant No. 1 was shown a nominal purchaser with late Pramila. However, that is a matter for trial. At this juncture, the learned Judge, City Civil Court committed no error in entering a *prima facie* finding that defendant No. 1 appeared to have 75% share in the suit flat, even if release deed was eschewed from consideration.

13) It is imperative to note that the plaintiff claims that there was an independent agreement between the parties to pay money to the plaintiff though the release deed records that she had

executed the release deed out of natural love and affection. The validity of the said transaction is assailed on account of the alleged failure of consideration. In substance, the claim of the plaintiff partakes the character of a claim computable in terms of money.

14) As noted above, the learned Judge, City Civil Court, by an order of even date passed in Notice of Motion No. 2599 of 2022, restrained the defendant No. 1 from alienating or creating any third party right or interest in the suit flat except for the purpose of its redevelopment by defendant No. 2- Society.

15) In the context of the prayer in the instant Notice of Motion, the learned Judge has recorded a *prima facie* finding that the plaintiff is not in possession of the suit flat. In the totality of the circumstances especially the extent of interest of defendant No. 1, in the suit flat, the learned Judge correctly inferred that in the event of grant of injunction, as prayed by the plaintiff, the defendant No. 1 would suffer an irreparable loss. Balance of convenience, in the circumstances of the case, also tilts in favour of the defendant No. 1.

16) Since the City Civil Court has exercised the discretion to restrain the defendant No. 1 from creating third party right or

interest in the suit flat, save and except for the purpose of redevelopment, the impugned order declining to grant the temporary injunctions, which were sought in a mandatory form, does not warrant any interference in exercise of appellate jurisdiction.

17) Hence, the following order.

:-ORDER:-

- i) The Appeal stand dismissed.
- ii) In view of the dismissal of the Appeal, the Interim Application also stands dismissed.
- iii) No costs.

[N. J. JAMADAR, J.]