

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 445 OF 2023

Vibha Vithhal Adulkar
Alias Ratnaprabha Eknath Sawant ...Appellant

Versus

Shantaram Bhiwa Sawant & Another ...Respondents

...

Mr. V.S. Paradkar a/w Mr. Prakash Bhand, for Appellant.

Mr. Arman Grewal a/w Mr. Rahul Raut, for Respondent No.1

...

CORAM : SANDEEP V. MARNE, J.

DATE : 06 NOVEMBER, 2023

ORAL JUDGMENT:

1. Admit. With the consent of the parties, the Appeal is taken up for final disposal.
2. The challenge in the present Appeal is to the order dated 26 April 2023 passed by the City Civil Court allowing Notice of Motion No.1618 of 2023 in terms of prayer clauses (a) & (b).
3. The Plaintiff/Respondent has instituted S.C. Suit No.990 of 2023 with following prayers:

- “ a) This Hon’ble Court may be pleased to grant permanent injunction or any other injunction or direction thereby restraining the Defendants, (and/or their legal heirs, representatives, agents, servants or anybody claiming through them or acting through them) from dispossessing the Plaintiff, (and/or his legal heirs, representatives, agents, servants or anybody claiming through him or acting through him) from the suit property without due process of law;
- b) This Hon’ble Court may be pleased to grant permanent injunction or any other injunction or direction thereby restraining the Defendants, (and/or their legal heirs, representatives, agents, servants or anybody claiming through them or acting through them) from disturbing or obstructing the possession and peaceful usage by the Plaintiff in any manner, (and/or by his legal heirs, representatives, agents, servants or anybody claiming through him or acting through him) in respect of the suit property without due process of law;
- c) Pending the hearing and final disposal of the present suit, this Hon’ble Court may be pleased to grant interim and ad-interim relief in terms of prayer (a) and (b) above;
- d) The cost of the present suit may be provided for;
- e) Any other and further reliefs, as the nature and circumstances of the case may require may be granted.”

4. In his suit the Plaintiff/Respondent has described the suit property as under:

- “ 2. The Plaintiff states that, the Plaintiff alongwith his family is residing at Sawant Niwas, 16 Borbhat Lane, Girgaum, Mumbai 400 004 (for the sake of brevity and convenience hereinafter refereed to as the “the suit premises”) since the year 1957. As on today, there are 5 members in the family of the Plaintiff who are still residing at the suit premises viz.
- a) Shantaram Bhiwa Sawant - The Plaintiff
- b) Ravindra Shantaram Sawant - Son
- c) Anita Ravindra Sawant - Daughter in Law

- d) Atharva Ravindra Sawant - Grandson
- e) Parth Ravindra Sawant - Grandson ”

5. It appears that the suit premises consist of ground floor and attic. Suit premises were owned by Eknath Bhiwa Sawant, who executed a partnership with his brother Shantaram Bhiwa Sawant (Plaintiff) on 30 October 1973 in relation to the painting business under the name “M/s. E.B. Sawant & Co.”. It appears that Eknath Bhiwa Sawant had permitted Plaintiff to occupy the attic floor of the suit premises since he had become partner in the firm. After Eknath Bhiwa Sawant’s demise, his wife, Laxmi Eknath Sawant along with others instituted Suit No.444 of 1991 in this Court seeking various reliefs including the relief of settlement of accounts of the partnership firm as well as recovery of possession of attic floor from Plaintiff. In that suit, this Court passed order dated 18 August 1993 permitting Plaintiff to continue to reside in the attic of the suit property. Later further interim order came to be passed by this Court on 03 October 1997 in Notice of Motion No.3086 of 1994 in Suit No.444 of 1991 restraining the Plaintiff and his family members from using kitchen or the ground floor premises except the staircase, WC and bathroom located at the backside of the suit premises. It appears that Suit No.444 of 1991 came to be transferred to the City Civil Court and numbered

as Suit No. 9803 of 1991. The Plaintiff deleted the prayer for recovery of possession of attic floor from Suit No.9803 of 1991 and restricted the suit only for settlement of accounts of the firm. In respect of the recovery of possession of attic, a sperate proceedings being L.E & C. Suit No.42 of 2016 came to be filed before the Small Causes Court.

6. L.C. Suit No. 9803 of 1991 came to be decreed by the City Civil Court by Judgment and order dated 15 October 2022 holding that the Plaintiff herein has no right title or interest in the assets of the firm “M/s. E.B. Sawant & Co.” including office therein. He was directed to furnish the statement of accounts of the firm as well as the list of the assets. It was further declared that Laxmi Eknath Sawant and Ratnaprabha Eknath Sawant had 60% share and the Plaintiff herein had 40% share in the firm. In respect of L.E. & C. Suit No.42 of 2016, a decree came to be passed on 14 March 2023 directing the Plaintiff herein to vacate the suit premises of that suit (attic). It is common ground that the judgment and order passed by the Small Causes Court in L.E & C. Suit No.42 of 2016 has attained finality.

7. In this background, the Plaintiff herein has instituted S.C. Suit No. 990 of 2023 against Vibha Vithhal Adulkar, who is the daughter of Late Eknath Bhiwa Sawant and against Vithhal Bhagoji Adulkar, Vibha’s husband

seeking injunction from dispossessing him from the suit premises without following due process of law. He also filed Notice of Motion No.1618 of 2023 seeking temporary injunction to restrain the Appellant herein from dispossessing or disturbing Plaintiffs possession over the suit property.

8. I have heard Mr. Paradkar, the learned counsel appearing for the Appellant and Mr. Grewal, the learned counsel appearing for the Respondent.

9. After considering the submissions canvassed by the learned counsel appearing for the parties it is seen that the description of the suit property in the Plaint is such that the entire structure named “Sawant Niwas”, 16 Borbhat Lane, Girgaum, Mumbai, is described as ‘Suit Premises’. The learned counsel appearing for Respondent is at pains to point out attic floor of the structure ‘Sawant Niwas’ does not form part of the ‘suit premises’ and that no relief is sought in respect of the attic floor. However, the description of the suit put in Paragraph-2 of the Plaint does not in any manner exclude attic floor of the structure “Sawant Niwas”. The effect of the impugned order passed by the City Civil Court is such that the Appellants/Defendants are restrained from dispossessing Plaintiff from attic floor. The order of injunction of the City Civil Court is thus in the teeth of final decree passed by the Small Causes

Court in L.E & C. Suit No.42 of 2016 on 14 March 2023. Thus, *qua* attic floor, the injunction granted by the City Civil Court is clearly unsustainable.

10. So far as the ground floor premises are concerned, the City Civil Court has proceeded to pass an order of injunction by observing that the Plaintiff is in settled possession thereof. However, the learned Judge of the City Civil Court has not considered the effect of orders passed by this Court on 18 August 1993 and 3 October 1997 where the Plaintiff herein was permitted to occupy only attic floor and was specifically restrained from occupying any other portion of the ground floor except visiting rights to the staircase, WC and the Bathroom. The order passed by this Court continued to operate till disposal of the suit or in any case till Plaintiffs therein withdraw the prayer for possession of attic. The learned counsel appearing for Respondent would contend that both the Laxmi Eknath Sawant as well as Defendant No.1 Vibha Vithhal Adulkar shifted their residence to Mulund in the year 1998. He would rely upon death certificate of Laxmi to demonstrate that her death also happened at Mulund. It is thus the case of the Respondent/Plaintiff that the Defendants left the possession of the suit property in the year 1998 and thereby permitted Plaintiff to occupy the entire suit structure. In my view if at all Plaintiff occupied the structure on the ground floor of "Sawant Niwas" in

the year 1998, the same was in violation of the injunction granted by this Court vide orders dated 18 August 1993 and 03 October 1997. The possession so obtained in respect of ground floor premises is in breach of the injunction orders passed by this Court and such possession cannot be termed as settled possession in any manner.

11. In my view therefore the alleged possession of the Plaintiff/Respondent in respect of ground as well attic floor appears to be totally unauthorized. The City Civil Court has committed a glaring error in holding that “*Present suit property is no way concerned with the property mentioned in the earlier suit*” by ignoring the position that the Plaintiff did not exclude attic from the description of the suit property in Paragraph-2 of the Plaint. His possession of ground floor structure is in breach of injunction order passed by this Court. Therefore, it cannot be stated that the possession is, in any manner settled, as sought to be suggested by the learned Judge of the City Civil Court.

12. In my view therefore no *prima facie* case is established by the Plaintiff for grant of any interim injunction in his favour. This is not a case where another view than the one taken by the learned Judge is possible. This is a case of palpable error in assuming that attic is not part of suit premises and

that the possession of ground floor obtained in breach of interim order passed by this court is settled possession. The Appeal Court is therefore justified in interfering with the order passed by the learned judge.

13. The learned Judge of the City Civil Court has thus committed an error in allowing the Notice of Motion in terms of prayer clauses (a) & (b) and the order is unsustainable. The Appeal accordingly succeeds. Order dated 26 April 2023 passed by the City Civil Court in Notice of Motion No.1618 of 2023 is set aside. It is however clarified that the findings recorded in the present order are only *prima facie* and the City Civil Court shall not be influenced by the findings while deciding the suit finally. The appeal is accordingly allowed. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

14. After the order is pronounced, the learned counsel appearing for Respondent/Plaintiff would pray for continuation of the order of injunction passed by the City Civil Court for a period of eight weeks. The prayer is opposed by the learned counsel appearing for the Appellant/Defendant. Considering the findings recorded for allowing the Appeal, the request for continuation of stay is rejected.

(SANDEEP V. MARNE, J.)