

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 868 OF 2014
WITH
CIVIL APPLICATION NO. 1043 OF 2014

Prakash Vasant Patkar ... Appellant
Versus
Hiranyakeshi Sahakari Patpedhi Mydt. ... Respondents
Mumbai & Ors.

Mr. Mayur Khandeparkar a/w. Mr. S.S. Redekar for the
appellant/applicant.

Mr. Shreepad Murthy a/w. Mr. Bhimrao A. Powar for respondent
no. 1.

Mr. S.G. Deshmukh i/b. Mr. Suraj S. Kudalkar for respondent nos.
2 to 7.

Ms. P.N. Dabholkar, AGP for the State/respondent no. 8.

CORAM: G. S. KULKARNI, J.
DATED: 4 January 2023

P.C.

1. Heard Mr. Khandeparkar, learned counsel the appellant/defendant no.
8, Mr. Shreepad Murthy, learned counsel for respondent no. 1/plaintiff, Mr.
S.G. Deshmukh for respondent nos. 2 to 7/defendant nos. 1 to 6.

2. This appeal is directed against an order dated 28 July, 2014 passed by the
learned Juge of the City Civil Court at Mumbai, being a composite order on
five Notice of Motions (Notice of Motion No. 1256 of 2013, Notice of Motion
No. 1320 of 2012, Notice of Motion No. 1503 of 2012, Notice of Motion No.
1697 of 2012 and Notice of Motion No. 3444 of 2012. Of all these Notice of

Motions, it is the Notice of Motion No. 1256 of 2013 on which the following order is passed. All other Notice of Motions were dismissed as infructuous. The operative part of the order passed on Notice of Motion No. 1256 of 2013 is required to be noted, which reads thus:

“ORDER

- “(a) The notice of motion no. 1256/13 is allowed.*
- (b) The Court Receiver of Hon’ble Bombay High Court is appointed as Receiver. He shall receive possession of the suit premises Room No. E/1, 279, Sambhaji Nagar Cooperative Housing Society Ltd., Ground floor, N.M. Joshi Marg, Mumbai – 13 from the defendant no. 8. He is directed to preserve the suit premises as it is till final disposal of the suit.*
- (c) The defendant no. 8 is hereby temporary restrained from creating third party interest in the suit premises till disposal of the suit.*
- (d) Rest of the prayers made in NM No. 1256/13 are rejected.*
- (e) The notice of motion bearing no. 3444/12, 1697/12, 1320/12, 1503/12 become infructuous in view of the order passed in NM NO. 1256/13 hence they are disposed of as filed.*
- (f) As the suit premises is taken in possession of the receiver, the suit is expedited. The plaintiff as well as defendants are directed to take necessary steps to decide the suit as early as possible preferably within six months from today.*
- (g) Costs in cause.”*

3. Briefly the facts are that the appellant/defendant no. 8 claims to have purchased the suit tenement being Room No. E/1, 279, Sambhaji Nagar Cooperative Housing Society Ltd, Ground floor, N.M. Joshi Marg, Mumbai - 400 013 under a registered sale deed dated 13 September, 2012, executed in favour of the appellant by the original owner/defendant nos. 2 to 6. Defendant

no. 8 appears to be asserting rights in respect of suit tenement from one Ramchandra Bhagoji Pawar, the predecessor-in-title of respondent nos. 1 to 6 on the ground that Ramchandra Pawar was not the owner of the tenement and it was respondent no. 1/plaintiff, who was the lawful owner, as the amounts were contributed by respondent no. 1/plaintiff to acquire the original tenancy of the said premises prior to the premises being redeveloped, when the suit tenement came to be acquired in the name Ramchandra Pawar.

4. It appears that respondent no. 1/plaintiff asserted right, title and interest in respect of tenement by approaching the City Civil Court in S.C. Suit No. 1206 of 1994 which was filed against Sambhaji Nagar Cooperative Housing Society Ltd. and Ramchandra Bhagoji Pawar, the predecessor in title of defendant nos. 1 to 6 (respondent no. 2 to 7) seeking a relief for a declaration in the following terms:

“a) Declaration that Defendant no. 2 holds a share certificate of Defendant no. 1 and the suit premises, being premises located at 279, D-3, Sambhaji Nagar CHS, N.M. Joshi Marg, Mumbai – 400 013, in his name, as a constructive trustee of the plaintiff and on behalf of the plaintiff;

b) Declaration that the plaintiff is entitled to transfer of the share certificate and vacation notice in respect of the suit premises, and for allotment of permanent alternate accommodation in the reconstructed building in their name; and

c) Defendant no. 2 be directed by a mandatory order and injunction to give his written consent for transfer of the share certificate of Defendant no. 1 qua the suit premises.”

5. The said suit was unconditionally withdrawn by respondent no. 1/plaintiff on 17 October, 2008. In the year 2010, there was an attempt on the

part of respondent no. 1/plaintiff to revive the withdrawal of the suit, which itself stood dismissed for want of prosecution. It thus appears that respondent no. 1/plaintiff's attempt to assert the rights on the suit tenement on the basis of title, had come to an end. It appears that on 19 December, 2011, the office bearers of respondent no. 1/plaintiff forcibly barged inside the suit tenements and sealed the premises by putting a lock. It appears that the owner of the tenement Mr. Ramchandra Bhagoji Pawar filed a police complaint against such forcible possession being taken over by the office bearers of the Respondent no. 1-Society. He also filed proceedings, being Criminal Writ Petition No. 3 of 2012, in which orders came to be passed by this Court directing the police to take necessary action. It appears that consequent therof, the police sealed the suit premises on 30 April, 2012. It also appears from the record that after taking forceful possession, respondent no. 1/plaintiff filed the suit in question on 26 April, 2012 seeking only a relief of a permanent injunction. The only substantive prayer in the suit reads thus:

“a) That this Hon’ble Court be pleased to pass a permanent order and injunction restraining to the defendants, their agents, servants, officers, representatives and/or any person/s claiming through or under them from any manner of disturbing plaintiffs lawful possession of the suit premises viz. Room no. E/1, 279, Sambhajinagar Cooperative Housing Society Ltd., Ground floor, N.M. Joshi Marg, Mumbai – 400 013 without following due process of law.”

6. It is pertinent that in paragraph 2 of the plaint, respondent no. 1 has admitted that the suit tenement was acquired in the name of Ramchandra

Pawar. It also appears that respondent no. 1/plaintiff without disclosing to the Court that on 30 April, 2012 the Senior Inspector of Police had sealed the suit premises, moved a draft Notice of Motion in the suit and sought an ad-interim order from the learned trial Judge, which reads thus:

“2/05/2012
1137/12

CORAM : H.H. JUDGE SHRI A.M. DHAVALE

By praecipe

Adv. Bhimrao Pawar for Pltf.

Leave granted to register NM

There are several documents on record to show that the plaintiff is in possession of the suit property since long. If he is dispossessed the suit would become infructuous.

Hence, an ad-interim relief granted in terms of prayer (a) for next 15 days.

Issue show cause notice to the def. and pltf. to comply Order 39 Rules 3(a) & (b).”

7. However, later on 11 May, 2012 the learned trial Judge suspended the order dated 2 May, 2012 until further order, by passing the following order:

“ORAL ORDER

“The documents produced by advocate Mr. Kudalkar for defendant no. 2 and by Mr. P.K. Pandit for the state of notice issued by defendant no. 2 disclose that a strong criminal dispute was pending before Criminal Court under investigation as per direction of the High Court. It is disclosed that the premises has been sealed and in possession of the police since 30/4/2012. These facts were suppressed by the plaintiff in arguments dated 2/5/2012. In the circumstances, the operation of order dated 2/5/2012 is hereby suspended until further order.”

8. Thereafter it appears that on 7 June, 2012, learned Addl. Chief Metropolitan Magistrate 37th M.M. Court at Esplanade, Mumbai passed an order of removal of the seal and handed over possession of the suit tenement to

defendant no. 2-Mr. Mohan R. Pawar, son of original owner Mr. Ramchandra Bhagoji Pawar and also ordered investigation. The said order was not appealed by respondent no. 1/plaintiff. In these circumstances, prima facie there is substance in Mr. Khandeparkar's contention that the suit has become infructuous.

9. Thus, the position is quite clear that respondent no. 1/plaintiff was not in possession. Also, respondent no. 1/plaintiff had no documents of title whatsoever of the suit tenement and at all material times, the suit tenement was of the right, title, ownership of Ramchandra Pawar as also the possession of the suit tenement was with M.R. Pawar/defendant no. 2 as noted above. At this stage, it is also required to be noted that the assertion of respondent no. 1/plaintiff of ownership rights in respect of the suit tenement had come to an end by respondent no. 1/plaintiff withdrawing the suit and thus, there was no substantive challenge to the right, title and interest of Ramchandra Pawar and his successors to enjoy ownership right, title and interest in respect of suit tenement. There was no embargo either for Ramchandra Pawar or his successors to sell the suit tenement in favour of any third party. In these circumstances, the appellant under a registered sale deed dated 13 September, 2012 had acquired right, title and interest in respect of the suit tenement. In my opinion, there was no question of any temporary injunction being granted

against appellant/defendant no. 8. This more particularly when the sale deed which was entered between respondent nos. 2 to 7/defendant nos. 1 to 6 and appellant/defendant no. 8, in no manner was assailed in any substantive proceeding by respondent no. 1/plaintiff. It is thus surprising as to how an injunction could be granted against the appellant/defendant no. 8 by the impugned order against the real owner.

10. Now coming to the impugned order, there is another glaring illegality, namely, that the learned Judge has appointed the Court Receiver, High Court, Bombay as the Receiver in the proceedings before the City Civil Court. The Court Receiver, High Court Mumbai could not have been appointed by the City Civil Court as there would be no such jurisdiction with the City Civil Court to appoint Court Receiver, High Court, Mumbai as a Receiver considering the well settled position in law in that regard.

11. In *Girish M. Joshi Vs. Jagat Manubhai Parikh & Ors.*¹, a co-ordinate Bench of this Court has observed that the City Civil Court would not have jurisdiction to appoint an officer of this Court as the Receiver in suits and proceedings before the City Civil Court. The relevant observations of the Court can be noted, which read thus:

“4. Thus, the order of Division Bench notes that the Court Receiver, High Court, Bombay is an employee of the High Court who is subject to

1 Writ Petition No. 2527 of 2009 decided on 11 September, 2009

administrative control of the Hon'ble the Chief Justice. There is no provision either in the Original Side Rules or in the Rules framed under the City Civil Courts Act which empowers the City Civil Court to appoint the Court Receiver, High Court, Bombay as a Receiver in the suits and proceedings filed in the City Civil Court at Bombay. The Court Receiver in his report has pointed out provisions of Chapter I of the Office Manual issued by the office of the Court Receiver in which it is stated that the Court Receiver may be appointed as a Receiver of a property either by the High Court or by the City Civil Court. The Office Manual is nothing but a book of departmental instructions. Prima facie it appears to me that on the basis of the provisions of the Office Manual, the City Civil Court does not get jurisdiction to appoint an officer of this Court as the Receiver in suits and proceedings pending in the said Court. By that logic, every Court in the State of Maharashtra will be entitled to appoint Court Receiver, High Court, Bombay as a Receiver.

5. In the report of the Court Receiver various orders passed by the City Civil Court have been pointed out. The office of the Court Receiver is already under enormous pressure as by virtue of orders passed by this Court in various suits and proceedings including the arbitration petitions under section 9 of the Arbitration and Conciliation Act, 1946, the Court Receiver is required to 'look after very large and valuable immovable properties in the City of Bombay and at other places. In fact, by virtue of appointment as of the Court Receiver in suits filed in this Court, the Receiver has to look after properties which are situated even outside the State of Maharashtra. Considering the enormous pressure on the office of the Court Receiver, High Court, Bombay and the lack adequate infrastructure, the said office cannot be burdened any further. There is no provision of law under which any Court subordinate to this Court can appoint the Court Receiver, High Court, Bombay as a Receiver.'

(emphasis supplied)

12. Be that as it may, in the facts and circumstances of the present case, there was no case whatsoever made out by respondent no. 1/plaintiff for appointment of Court Receiver, High Court, Mumbai. There was not a semblance of a right much less any prima facie right shown by respondent no. 1 which would demonstrate any such order to be passed. This, more particularly, when even remotely no case of any right, title and interest was made out by respondent no. 1 in respect of the suit premises.

13. Thus, in the aforesaid circumstances, although by an order dated 13 August, 2014 this Court had directed that the appellant should not create any third party right, title and interest in respect of suit property till the adjourned date of hearing and the said order has continued to remain in operation, in my opinion, there is no warrant in continuing such order during the pendency of the appeal. The impugned order in fact is ex-facie indefensible and cannot remain in operation.

14. Despite the above detailed discussion, nonetheless as Mr. Murthy would insist that he has further better arguments to advance, hence the Appeal is admitted.

15. For the above reasons, the impugned order dated 28 July, 2014 passed on Notice of Motion shall remain stayed during the pendency of the appeal.

16. Learned counsel for the respondents waives service.

17. Civil Application stands disposed of.

18. Stand over to 22 February 2023 for directions.

G. S. KULKARNI, J