

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.86 OF 2023
IN
SPECIAL CIVIL SUIT NO.2300 OF 2011

Kalpana Prafullachandra Pashankar and Others ...Appellants
vs.
Shyam Gnyaniram Agarwal and Others ...Respondents

Mr. Siddharth Ronghe, for the Appellants.
Mr. Saurabh Patil, for Respondent Nos. 1 to 3.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 15, 2023

P.C.:

1. This appeal is directed against an order dated 20th October, 2022 passed by the learned 11th Joint Civil Judge (S.D.), Pune rejecting the application preferred by the appellants/plaintiffs for appointment of Court Receiver under the provisions of Order XV Rule 1 of the Code of Civil Procedure, 1908 (the Code).

2. The background facts can be stated in brief as under:-

The plaintiffs were the owners of the property bearing City Survey No. 364+365/8+9 situated at Shivaji Nagar, Pune (the suit property). By executing a Sale Deed dated 27th November, 1995 the plaintiffs No. 1 and 2 sold and conveyed the suit property in favour of the defendants. The consideration was in two parts. First,

monetary consideration of Rs. 15 lakhs, which was paid by the defendants. Second, the defendants had also agreed to construct and deliver to the plaintiffs a residential flat having carpet area of 3000 sq.ft and terrace above the said residential flat, and shop on the ground floor admeasuring 400 sq.ft. In addition, the defendant had agreed to execute a Perpetual Lease Deed in respect of an area admeasuring 255.85 sq. mts.

Alleging that the defendants committed breach in performance of the executory part of the contract contained in the Sale Deed dated 27th November, 1995, the plaintiffs terminated the said contract and instituted a suit for declaration that the Sale Deed Deed dated 27th November, 1995 was legally and validly terminated, the cancellation of the instrument, delivery of actual, physical and vacant possession of the suit property upon receipt of the consideration of Rs. 15 lakhs, perpetual injunction restraining the defendants from interfering with plaintiffs possession of the top floor of the existing structure on the suit premises and other consequential reliefs.

3. In the said suit, the plaintiffs filed an application for temporary injunction (Exhibit 5). By an order dated 13th November, 2021 the learned Civil Judge (SD) was persuaded to temporarily

restrain the defendants from creating third party rights in the suit property. The plaintiffs again moved an application for further interim relief (Exhibit 57). It was, inter alia, alleged that the defendants were carrying out unauthorized development in the suit property and the property was in danger of being wasted. By an order dated 13th November, 2021 the learned Civil Judge restrained the defendants from demolishing any portion of the suit property or otherwise cause damage thereto.

4. The plaintiffs preferred an application (Exhibit 103) asserting that despite the aforesaid injunction orders, the defendants, in the month of October, 2022 started to demolish a portion of the suit property. Tin sheds were removed. Flooring was also changed. The defendants paid no heed to the repeated requests of the plaintiffs to adhere to the interim orders passed by the Court. The plaintiffs thus preferred an application for appointment of the Court Receiver so as to protect the suit property from damage or waste and recovery of rent from the tenants in the suit property.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application opining, inter alia, that indisputably the defendants were in possession of the suit property

and the plaintiffs did not have an immediate right to dis-posses the defendants. In the view of the trial Court, the bar under sub Rule (2) of Rule 1 of Order 40 of the Code came into play.

6. Being aggrieved, the plaintiffs are in appeal.

7. Mr. Ronghe, the learned counsel for the appellants/ plaintiffs took the Court through the pleadings and the interim orders passed by the Courts below (Exhibit 5) dated 13th November, 2021 and (Exhibit 57) dated 8th March, 2021. An endeavour was made to demonstrate that, in complete disregard to the orders passed by the Court, the defendants continued to carry out unauthorized alteration and development in the suit property. This brazen disobedience of the order of the Court which ultimately leads to irretrievable damage to and waste of the suit property can only be arrested by appointing a Court Receiver. Mr. Ronghe submitted that the learned Civil Judge mis-directed himself in giving undue importance to the factum of possession of the defendants.

8. I have carefully considered the submissions on behalf of the appellants. Perused the pleadings, material on record and the impugned order.

9. Indisputably, the possession of the defendants over the suit property is relatable to acquisition of ownership on the strength of the conveyance; about the execution of which there is no dispute. On the contrary, it is the case of the plaintiffs that the contract stood vitiated on account of the breach of the conditions subsequent. The plaintiffs thus claimed that the contract contained in the Sale Deed, which according to them is executory in part, stood validly terminated. This nature of the plaintiffs claim assumes significance while considering the aspect of the immediate right of the plaintiffs to dis-posses the defendants, *in presente*.

10. Appointment of the Court Receiver is, in a sense, a serious matter. Undoubtedly, it is a discretionary remedy. Order XV Rule 1 of the Code expressly provides for the appointment of the Receiver in respect of a property where the Courts find it 'just and convenient'. The Court is empowered to confer on the Receiver the powers to administer manage, protect and preserve a disputed property involved in a suit. In the matter of appointment of a Receiver, the Courts exercise the discretion with circumspection. Thus though the discretion vested in the Court is of widest possible amplitude, the exercise of discretion has to be to sub-serve the ends of justice.

11. Sub Rule (2) of Rule 1 of Order 40 of the Code in terms provides that nothing in the said Rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has no present right so to remove. It, however, does not imply that the Court can not exercise the discretion where it finds the appointment of Court Receiver just and convenient to protect the subject matter of the lis.

12. A judgment of the learned single Judge of Madras High Court in the case of T. Krishnaswamy Chetty vs. C. Thanga-Velu Chetty and Ors.¹ is often referred to, when the Courts are called upon to exercise the discretion to appoint a Court Receiver. In the said case, the learned single Judge has enunciated the principles which guide the Courts in the matter of appointment of a Court Receiver. They can be summarized as under:-

1] The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

2] The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit.

3] Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of

1 AIR 1955 MADRAS 430

danger is an important consideration.

4] An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one. And

5] The Court, on the application made for the appointment of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame.

13. On the aforesaid touchstone, reverting to the facts of the present case, it is imperative to note that the fate of the suit hinges upon the plaintiffs claim that the contract contained in the Sale Deed stood vitiated on account of failure on the part of the defendants to perform the condition subsequent. Secondly, the possession of the defendants is relatable to a lawful conveyance and in exercise of the incidence of ownership. Thirdly by way of interim injunction, the plaintiffs interest has been adequately protected. Fourthly, if there are allegations of breach of injunction order in the sense that certain demolition work has been carried out in breach of the order of the Court, there are provisions by resorting to which the grievance can be legitimately redressed.

14. The appointment of the Court Receiver, in the circumstances

of the case, does not seem to be justifiable especially having regard to the nature of the plaintiffs claim.

15. In the totality of the circumstances, the learned Civil Judge does not seem to have committed any error in declining to exercise the discretion to appoint the Court Receiver.

16. The Court is also concerned about the manner in which the suit is being proceeded with. Mr. Ronghe, fairly submitted that the evidence of the plaintiffs has yet not been commenced. Even after 12 years of the institution of the suit, the trial Court is called upon to take up the interim applications. The proper course would be to adjudicate the suit expeditiously.

17. For the foregoing reasons, the appeal deserves to be dismissed.

Hence, the following order.

ORDER

1] The appeal stands dismissed.

2] No costs.

(N. J. JAMADAR, J.)