

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.3321 OF 2021
IN
SUIT NO.272 OF 2018

Gokuldas Ramraya Pai ... Applicant / Plaintiff
Vs.
Shah Developers Private Limited and others ... Respondents

WITH
NOTICE OF MOTION NO.463 OF 2018
IN
SUIT NO.272 OF 2018

Mr. Somnath B. Amin for Applicant / Plaintiff.

Mr. Ashok Dhanuka and Ms. Dipoy Sequeira i/b. W3 Legal LLP for Defendant
Nos.1 and 3.

Mr. Prathamesh Kamat a/w. Ms. Sneha Patil i/b. Maniar Srivastava Associates for
Defendant Nos.4 and 5.

Mr. K. H. Mastakar for Defendant - BMC.

CORAM : MANISH PITALE, J.
DATE : JUNE 12, 2023

P.C. :

The applicant / plaintiff has filed the present application seeking specific interim reliefs, primarily to the effect that the defendants need to be restrained from carrying out any construction / development on C.T.S. No.206, Survey No.99, Hissa No.15 at Kandivali (West), Mumbai, apart from also praying for identical interim reliefs insofar as CTS No.213 is concerned.

2. The present suit is filed by the plaintiff seeking declaration of being the sole and absolute owner of C.T.S. Nos.206 and 213 at Kandivali (West), Mumbai and also for a declaration that the defendants do not have any right in the said property, apart from further reliefs.

3. As noted hereinabove, the present application is filed, claiming

that the defendants have no right to carry on any construction / development on C.T.S. Nos.206 and 213. In fact, a prayer is made for a direction to pull down the construction already made on C.T.S. No.206. The applicant / plaintiff relies upon documents including agreements to sell and unregistered conveyance, in order to press the reliefs in the present application. The defendants have filed their affidavits opposing the present application, *inter alia*, relying upon a judgement and decree dated 28.02.2011 passed by the City Civil Court at Dindoshi, Mumbai in an earlier suit filed by the plaintiff. It is submitted that in the face of the findings rendered in the said judgement and decree, which was not challenged by the plaintiff, he is not entitled to claim reliefs in the suit, much less the interim reliefs in the present application. It is further pointed out that this Court in Notice of Motion No.16 of 2016 in Commercial Suit No.30 of 2016 (*Anand Laxmanrao Ambesange and another Vs. M. S. Shah Developers Pvt. Ltd. and others*) passed a specific order on 23.10.2017 appointing Court Receiver insofar as C.T.S. No.206 is concerned, giving further directions for carrying out construction on the said property under the supervision of the Court Receiver. It is submitted that in the face of such orders, there is no question of considering the interim reliefs sought by the plaintiff.

4. This Court has heard the learned counsel for the rival parties, who have made submissions in consonance with the pleadings on record. According to the learned counsel appearing for the plaintiff, the construction being carried out at C.T.S. No.206 is unauthorized. It is conceded that insofar as C.T.S. No.213 is concerned, no construction is being carried out.

5. This Court has perused the material on record, particularly the judgement and decree passed by the City Civil Court on 28.02.2011 in S.C.Suit No.3495 of 2007 filed by the plaintiff against defendant No.1 herein. The said document is crucial for considering as to whether the

plaintiff has at all made out a *prima facie* case in his favour for granting interim reliefs as prayed. A perusal of the said judgement and decree passed by the City Civil Court shows that specific findings have been rendered to the effect that the plaintiff has no right, title or interest on the basis of agreement to sell, as such, the said document does not create any title in favour of the plaintiff. It is specifically recorded that therefore, the reliefs sought by the plaintiff in the context of the aforementioned properties could not be granted, except observing that the plaintiff could still press for restraining the defendant therein from carrying out any further construction on C.T.S. No.213. On this basis, the suit was partly decreed, only in the context of C.T.S. No.213 and that too, for restraining the defendant therein from carrying out construction on the said property.

6. As on today, even when the present application for interim reliefs is being pressed on behalf of the plaintiff, it is not the case of the plaintiff that the defendants are carrying out construction on C.T.S. No.213. In fact, a statement is made on behalf of defendant Nos.1 and 3 that even the FSI of C.T.S. No.213 is not being utilized while carrying out construction on C.T.S. No.206.

7. It is clear from the documents on record that in terms of the judgement and decree of the City Civil Court dated 28.02.2011, the plaintiff cannot press for any interim relief insofar as C.T.S. No.206 is concerned. The plaintiff is unable to show as to how he can claim such reliefs in the face of the findings rendered in the judgement and decree of the City Civil Court.

8. Apart from this, the defendants are justified in relying upon order dated 23.10.2017 passed by learned Single Judge of this Court in Notice of Motion No.16 of 2016 in Commercial Suit No.30 of 2016 (*Anand Laxmanrao Ambesange and another Vs. M. S. Shah Developers Pvt.*

Ltd. and others), wherein the said developer is also a defendant. The said order takes into consideration the plight of the plaintiffs therein, being the flat purchasers in the project being developed on C.T.S. No.206. After taking into consideration all the relevant factors, by the said order, this Court found that it would be in the interest of justice that the Court Receiver is appointed in respect of the said property so that the project could be completed under the supervision of this Court. Accordingly, this Court directed appointment of Court Receiver, as also appointment of independent architect for the project, with further directions for carrying out construction in respect of the project on C.T.S. No.206.

9. This Court is of the opinion that the construction being carried out on C.T.S. No.206 can, *prima facie*, not be termed as ‘unauthorized’ by any stretch of imagination. Even today, the applicant / plaintiff is insisting that he is entitled to a declaration in respect of C.T.S. Nos.206 and 213, relying upon the agreements to sell and an unregistered conveyance. The City Civil Court, in its judgement and decree, has already dealt with the agreement to sell and it would be for the plaintiff to demonstrate how, in the face of the findings rendered by the City Civil Court, the reliefs claimed in the suit could be pressed on behalf of the plaintiff.

10. Be that as it may, no case is made out for demonstrating even *prima facie* that the applicant / plaintiff is entitled to restrain further construction on C.T.S. No.206, much less make a claim for pulling down the construction already made. In view of the admitted position that no construction has been carried out on CTS No.213 and the statement made on behalf of defendant Nos.1 and 3 - the developers that FSI of C.T.S. No.213 has not been utilized while carrying out construction on C.T.S. No.206, this Court is convinced that the applicant / plaintiff has failed to make out a *prima facie* case in his favour. Since

the plaintiff has failed to make out a *prima facie* case, there is no necessity to examine the other aspects pertaining to balance of convenience and the alleged irreparable loss that the applicant / plaintiff may suffer in the absence of grant of interim reliefs.

11. In view of the above, the application is found to be without any merit, and accordingly, it is dismissed.

(MANISH PITALE, J.)

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