

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 466 OF 2024

Jaspal Kaur Jaswant Singh Mokha And Others ...Appellants
Versus
Gurucharan Singh Mokha And Another ...Respondents

Mr. Bhavesh Parmar with Rajesh Sahani i/b Devmani Shukla for the Appellants.

Mr. Ankur Shah i/b Akshay Udeshi for Respondent No.1.

CORAM : M.M. SATHAYE, J.
DATE : 9th DECEMBER 2024

SNEHA
NITIN
CHAVAN

P.C. :

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1. Heard learned counsel for the Appellants and learned counsel for the Respondent No.1. Respondent No.2 Society had not appeared before the Trial Court, despite service. Therefore, considering the order that this Court proposes to pass, notice to Respondent No.2 is dispensed with.

2. The appeal is filed challenging the order dated 19.03.2024 passed by the City Civil Court, Greater Bombay at Bombay in Notice of Motion No. 2576 of 2023 in Suit No. 588 of 2023. By the said impugned order, the motion filed by the Appellants was partly allowed. Motion was filed for restraining Respondent No.1 from creating 3rd party interest in respect of suit flat and for restraining Respondent No.2 Society from transferring share certificate No.20 issued in the name of deceased Jaswantsingh Premsingh Mokha in respect of flat no. B-8, save and except to the Appellants being legal heirs of deceased Jaswantsingh.

3. Perusal of operative part of the impugned order shows that

under clause (2) thereof, Respondent No.1 is restrained from creating 3rd party interest. Neither the Appellant nor Respondent No.1 have challenged this clause No.(2).

4. This appeal is filed challenging clause (3) of the impugned order, under which Respondent no.2 Society is restrained from transferring the concerned share certificate in favour of 'anybody' till the decision in the suit.

5. Learned counsel for the Appellants invited this Court's attention to prayer clause (b) of the motion contending that the prayer was specific and injunction was sought restraining Society from transferring the share certificate to any third party, except the Appellants. He submits that the Appellants are legal heirs of deceased Jaswantsingh and contends that clause (3) of the impugned order is an indirect relief granted in favour of Respondent No.1 in the suit filed by the Appellants. He also submits that after the impugned order was passed, the Appellants have secured Letter of Administration because deceased Jaswansingh died intestate and the said order is dated 10.04.2024. It is therefore, obvious that this document was not available before the Trial Court for consideration.

6. On the other hand, learned counsel for Respondent No.1 submitted that Respondent No.1 has purchased the suit flat from Mr. Narang for consideration of Rs.12,600/- and he had produced copy of possession receipt along with possession letter issued in his favour along with written statement. He submitted that since its purchase, Respondent No.1 and his family members are in physical possession of the suit flat for last 40 years which is uninterrupted. He further pointed out case of adverse possession is also sought to be made out.

7. Perusal of the impugned order shows that so far as direction in

clause (3) is concerned, apparently the prayer as made by the Appellants in prayer clause (b) is not considered and blanket injunction is granted. The impugned order also does not indicate the consideration of documents relied upon by Respondent No.1 in respect of his case. Additionally, Appellants now claims to have Letter of Administration after the impugned order is passed.

8. In view of the aforesaid facts and circumstances, in my view, an opportunity deserved to be granted to both sides so far as prayer of restraining transfer of share certificate is concerned.

9. Hence, Appeal from Order is **disposed of** by passing following order.

(i) Clause (3) of the impugned order dated 19.03.2024, is set aside and the motion (NM No. 2576 of 2023) is restored to file to the extent of prayer clause (b).

(ii) The Trial Court is directed to consider prayer clause (b) of the motion, in the light of documents which are already produced on record by both the sides as also the document of letter of Administration that the Appellants will produce.

(iii) The said prayer clause (b) will be decided on its own merits, in accordance with law without being influenced by the impugned order. Rival contentions of both the sides in that regard are kept open.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)