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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2028 OF 2024

IN

SUTT (L) NO. 21494 of 2024

Micron Housing LLP

...Applicant

In the matter between

Micron Housing LLP

...Plaintiff

Vs.

Joy Garai & Ors.

...Defendants

Mr. Prathamesh Kamat a/w Nakul Jain, Sneha Patil i/by Maniar Srivastava Associates Advocates for the Applicant/Plaintiff.

Mr. Taher Rangwala a/w Shweta Rathod i/by Elixir Legal Services for Defendant No.3.

Mr. Mohit Jadhav, Addl.GP for Defendant Nos.6 and 7.

CORAM : ARIF S. DOCTOR, J.

DATE : 22nd JULY, 2024

P.C.:-

1. Mr. Kamat, Learned Counsel appearing on behalf of the Applicant has today pressed for urgent limited ad interim relief essentially against Defendant Nos.1 to 5 or any person claiming through or under them from acting or taking any steps in respect of land bearing Survey No.46 (Part), Hissa No.1, C.T.S. No.12 admeasuring 2317.90 Square Meters lying, being and situate at

Janardhan Ramji Mhatre Marg (Devle Road), near Ruia Park and defence boundary, Juhu, Andheri (West), Mumbai 400 049 (subject property).

2. Defendant Nos.1, 2, 4 and 5 though served, have not appeared.

3. It is the contention of Mr. Kamat that though the Applicant is the owner of the subject property, the Defendants have fraudulently entered into consent terms dated 22nd December, 2023, by which, they are attempting to deal with and/or deprive the Plaintiff of the subject property.

4. He submits that the present Suit has thus been filed seeking declaration *inter alia* that the consent terms entered into are illegal, null and void, and *non-est*. He has pointed out that the Applicant had under a registered Deed of Conveyance dated 22nd September, 2016 purchased the subject property from the original owner one Abdul Munaf Siddique. He then submitted that one of the ancestors of Defendant No.5 had, in the year 2014, filed a Suit in the City Civil Court of Bombay at Dindoshi being Suit No.1162 of 2014 seeking specific performance against Defendant Nos.3 and 4 in respect of the very same property. He submitted that, that Suit was also settled vide consent terms dated 19th July, 2014.

5. He pointed out that the Applicant's predecessor-in-title i.e. Abdul Munaf Siddique had challenged the consent terms dated 19th July, 2014 in Suit

No.2282 of 2016 filed in the City Civil Court of Bombay at Dindoshi to which, Defendant Nos.3 and 4 were party Defendants. Mr. Kamat submitted that in the said Suit filed by the Applicant's predecessor-in-title i.e. Suit No.2282 of 2016, the City Civil Court had passed an order dated 26th September, 2016 directing the parties not to create third party rights as also to maintain the position of the property as it was. He submits that it appears that during the pendency of the said Suit in the year 2023, Defendant Nos.3 and 4 and one Abdul Karim Yakub Nakashbandi executed an agreement to create third party rights in respect of the subject property in favour of Defendant Nos.1 and 2. He then pointed out that Defendant Nos.1 and 2 thereafter filed a Suit being Suit (L) No.25440 of 2023 in this Court against Defendant Nos.3 and 4 and said Abdul Karim Yakub Nakashbandi seeking specific performance of the agreement dated 12th August, 2023 entered into between them.

6. Mr. Kamat submitted that these facts came to the Applicant's knowledge only in June, 2024 in the circumstances more particularly set out in the Interim Application. He pointed out that a complete fraud has been played on this Court since the consent terms were executed in the teeth of the interim injunction passed by the City Civil Court of Bombay at Dindoshi in Suit No.2282 of 2016 as also by suppressing the fact that the Applicant is the registered owner of the subject property. It is thus that he seeks today urgent ad interim relief in terms of prayer clause (a), (b) and (d) of the Interim Application which read thus:

“(a) That pending the hearing and final disposal of the instant suit, this Hon'ble Court be pleased to stay the effect, implementation and operation of the (i) Consent Terms dated 22nd December 2023 executed between the Defendants No.1 to 2 on one hand and the Defendants No.3 to 5 on the other compromising the Suit (L) No. 25440 of 2023 and (ii) the Order dated 22nd December 2023 passed by this Hon'ble Court recoding such compromise and issuing directions contained in this Order dated 22d December 2023 in respect of land bearing Survey No.46 (Part), Hissa No.1, C.T.S. No.12 admeasuring 2317.90 Square Meters lying, being and situate at Janardhan Ramji Mhatre Marg (Devle Road), near Ruia Park and defence boundary, Juhu, Andheri (West), Mumbai 400 049;

(b) That pending the hearing and final disposal of the instant suit, this Hon'ble Court be pleased pass an order of temporary injunction restraining the Defendants No.1 to 5 or either of them their officers / servants / assigns / personnel / agents and / or any person claiming through or under them from acting or taking steps in respect of land bearing Survey No.46 (Part), Hissa No.1, C.T.S. No.12 admeasuring 2317.90 Square Meters lying, being and situate at Janardhan Ramji Mhatre Marg (Devle Road), near Ruia Park and defence boundary, Juhu, Andheri (West), Mumbai 400 049 in furtherance of or in pursuance of (i) Consent Terms dated 22nd December 2023 executed between the Defendants No.1 to 2 on one hand and the Defendants No. 3 to 5 on the other compromising the Suit (L.) No. 25440 of 2023 and (ii) the Order dated 22nd December 2023 passed by this Hon'ble Court recording such compromise and issuing directions contained in this Order dated 22nd December 2023.

(d) That pending the hearing and final disposal of the instant suit, this Hon'ble Court be pleased be pleased pass an order of Status Quo in respect of land bearing Survey No.46 (Part), Hissa No.1, C.T.S. No.12

admeasuring 2317.90 Square Meters lying, being and situate at Janardhan Ramji Mhatre Marg (Devle Road), near Ruia Park and defence boundary, Juhu, Andheri (West), Mumbai 400 049 as on the date of filing of the instant Suit."

7. Today, Mr. Rangwala, Learned Counsel appeared on behalf of Defendant No.3 and does not oppose the prayers that have been sought for. He submits that his client was a party to the consent terms and have executed the same, but has not received any consideration pursuant thereto from Defendant Nos.1 and 2.

8. Mr. Jadhav, Addl.GP appearing on behalf of Defendant Nos.6 and 7 submits that he would need some time to take instructions as to whether any documents have been registered pursuant to these consent terms.

9. After having heard Mr. Kamat, I am entirely satisfied that a case for limited ad interim relief has been made out. The Defendant Nos.1, 2, 4 and 5 though served, have failed to appear. *Prima facie* from the record it is clear that there is an order directing parties to maintain status quo in respect of the subject property. Defendant Nos.3 and 4 are parties to the Suit, in which the interim order was passed and yet have acted contrary to the order. Applicant relies upon a registered Deed of Conveyance to support his case of ownership. No one has today appeared to dispute any of the contentions of the Applicant. Hence there

shall be an ad interim order in terms of prayer clause (a), (b) and (d) already reproduced above which shall operate till the next date of hearing.

10. List the matter on 26th July, 2024.

(ARIF S. DOCTOR, J.)