



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 396/2025

KAMLESH BHERUMAL JAIN & ORS

..APPLICANTS

VS

PURSHOTTAM VISHANDAS RAHEJA & ORS

..RESPONDENTS

Ms. Sakina Electricwala i/b. Avyaan Legal for applicants.

Mr. Rohan Sawant a/w. Mr. Chaintanyaa Bhandarkar i/b. Numen Law Offices for respondent nos. 1 and 2.

Ms. Soniya Putta a/w. Ms. Souparnika, Ms. Priyanka Singh i/b. M/s, Solomon & Co. for respondent nos. 3 and 5.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 3 NOVEMBER 2025.

PRONOUNCED ON : 4 NOVEMBER 2025.

JUDGMENT :

1. This is a transfer application filed under Section 24 of the Code of Civil Procedure, wherein the applicants are seeking transfer of ten suits filed by them initially in the Bombay High Court which were subsequently transferred to the Bombay City Civil Court, pursuant to the amendment to the Bombay City Civil Court's Act, as the pecuniary jurisdiction of the Bombay City Civil Court was enhanced from One Crore to Ten Crores. The present application seeks re-transfer of ten

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suits from the Bombay City Civil Court back to the Bombay High Court, and to be heard along with Suit No. 2509 of 2011, which is pending before the Bombay High Court.

2. I have heard learned counsel for all the parties and I have gone through the records.

3. The respondents herein are the groups of two brothers, who have disputes amongst themselves. The said two brothers's groups are hereinafter referred to as "Purshottam Group" and "Shrichand Group". Both the groups have claimed their rights on a plot of land in Byculla region of Mumbai. On the said plot of land a building named "Sidhgiri" is constructed.

4. As dispute arose between two brothers, "Shrichand Group" filed a suit viz. Suit No.1266 of 2009 against "Purshottam Group" before the Bombay High Court. In the said suit, Notice of Motion bearing No.1787 of 2009 was preferred, which was disposed of by the Single Judge of this Court vide order dated 9 September 2009. In the said order direction was passed that it would be open to both the sides to negotiate with prospective buyers of the remaining 27 flats of the building "Sidhgiri", with intimation to them. The said order dated 9 September 2009 was challenged before the Division Bench of this

Court. There was a stay granted by the Division Bench of this Court to the said order dated 9 September 2009. The order passed by the Division Bench of this Court was challenged before the Supreme Court and by its order dated 6 May 2011, the Supreme Court set aside the order passed by the Division Bench and confirmed the order dated 9 September 2009 passed by the Single Judge of this Court.

5. It is the applicants' case that in the meantime, between April 2010 and May 2011, the applicants have purchased their respective flats in the building 'Sidhgiri' from "Shrichand Group" by way of registered Agreement for Sale.

6. The "Purshottam Group" thereafter, filed Suit No.2509 of 2011 against the "Shrichand Group". The present applicants are also added as party defendants in the said suit. The said suit claims that the family arrangements are valid and binding and subsisting between the two groups. It is also further claimed that the agreements executed by the "Shrichand Group" in favour of the present applicants are all illegal, null and void and/or not binding on the "Purshottam Group".

7. Notice of Motion No.2281 of 2011 was preferred in 2009 suit by the present applicants – flat purchasers. The said Notice of Motion

was disposed of by an order dated 20 October 2012 by the Single Judge of this Court along with Notice of Motions of the plaintiffs and defendants. Paragraph Nos. 29 and 30 of the said Order dated 20 October 2012 read as under:-

29. The flat purchasers have applied for various reliefs without filing their own separate suit for specific performance of the agreements of flat purchase entered into by them. These reliefs cannot be granted by the Court in the suit between two brothers as principal and agent. However, orders and directions in compliance of the order dated 9th September, 2009 herein including allowing as defendant Nos. 1 and 2 to continue and complete the construction and obtain CC & OC would itself enure for the benefit of the flat purchasers.

30. The Notice of Motion of the flat purchasers is allowed to be withdrawn with liberty to take out proceedings for such reliefs in their own separate suit.

7.1 Therefore, the said Order dated 20 October 2012 permitted the present applicants to file their separate suits for specific performance if they intended to do so.

8. Notice of Motion No. 93 of 2017 was preferred in 2011 suit. While disposing of the said Notice of Motion vide its order dated 15 January 2018 by the Single Judge of this Court, reiterating the directions given by this Court in its order dated 20 October 2012 passed in 2009 suit, set up a timeline of 10 weeks to the present applicants to file their suits of specific performance if they desired so. Paragraph Nos. 6, 7 and 8 of the order dated 15 January 2018 read as under:-

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6. *Prayers (a) and (b) in Notice of Motion No.93 of 2017 are in respect of Respondent-flat purchasers. Some of them are represented by Mr Sawant in Court today. The others are personally present during the hearing. None of these flat purchasers have filed any suit of their own in respect of flat purchase agreements or their acquisition of title to their respective flats. I may only note that there are previous orders including one of Mrs Justice Dalvi of 20th October 2012 that not only allowed some of these flat purchasers to withdraw the Notice of Motion then taken out by them in the 2009 suit filed by Shrichand Raheja Group but also reserved liberty to file proceedings of their own.*

7. *It will be open, therefore, to the flat purchasers, the Respondents to the Notice of Motion No. 93 of 2017, to file an appropriate civil proceedings and initiate such proceedings or steps for interim protection as they are advised, but this must be done within a period of ten weeks from today. This is necessarily subject to all rights and contentions including as to limitation being kept open. The time limit is only provided with this view: that if the flat purchasers do not take steps on their own then they will not be entitled to seek protective interim relief in a suit filed by either the Shrichand Raheja Group or Purshottam Raheja Group. Since the flat purchasers are already arrayed as Defendants to Suit No. 2509 of 2011 filed by the Purshottam Raheja Group, these flat-purchaser-Defendants will, of course, and necessarily, have the right to file a counter-claim as well, if so advised.*

8. *Notice of Motion No. 1091 of 2015 filed by Purshottam Raheja Group is adjourned for a period of 12 weeks from today since that notice of motion inter alia seeks ejectment or taking over o possession from some of these very flat purchasers – Respondents.*

9. As per the directions given by this Court in the order dated 15 January 2018, the present applicants have preferred suit for specific performance which were initially filed before this Court. However, due to the enhancement of the pecuniary jurisdiction of the Bombay City Civil Court, these ten suits filed by the present applicants have been now transferred from the Original Side of this Court to the Bombay City Civil Court.

10. Hence, the present applicants have filed this application under

Section 24 of the Code of Civil Procedure for transfer of the proceedings of these ten suits from the Bombay City Civil Court back to the Bombay High Court and to be heard along with 2011 suit.

11. There is no dispute that ten suits which have been transferred to the Bombay City Civil Court were initially filed before this Hon'ble Court and were heard together along with 2011 suit. However, only due to the enhancement of the pecuniary jurisdiction of the Bombay City Civil Court, these ten suits have been transferred to the Bombay City Civil Court.

12. Issues have already been framed in 2011 suit by order dated 19 March 2024. Even thereafter, ten transferred suits to the City Civil were heard along with 2011 suit. Said Issues read as under:-

(1) Whether the Plaintiffs prove that a family arrangement was arrived at between Plaintiff No.1, late Shrichand Vishandas Raheja, late Vishandas Raheja and late Ramkishan Raheja on 30 January 1992?

(2) Whether the Plaintiffs prove that a family arrangement was arrived at between Plaintiff No.1, late Shrichand Vishandas Raheja and late Ramkishan Raheja on 20th August 1994 ?

(3) Whether the Plaintiffs prove that the family arrangements dated 30 January 1992 and the further family arrangement of 1994 ("family arrangements") are valid, subsisting and binding on the Defendant Nos.1 to 5?

(4) Whether the Plaintiff No.1 and/or his nominees are entitled to (i) the Byculla Property and (ii) the Sukh Sagar Property?

(5) Whether the Power of Attorneys dated (i) 8th August 2000; (ii) 21 September 2025; and (iii) 24 October 2008 are irrevocable, coupled with interest and/or executed for consideration and hence valid, subsisting and binding on Defendant Nos. 1 to 3 ?

(6) Whether the Agreements made between late Shrichand Raheja and/or

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Defendant Nos.1 to 3 in favour of Defendant Nos.7 to 27 (being Exhibits KK-1 to KK-15 to the Plaint) are legal, valid and binding on the Plaintiffs?

(7) Whether Defendant Nos.1 to 3 are jointly / severally liable to pay to the Plaintiffs Rs.3,78,53,648/- (as per the Particulars of Claim at Exhibits "X" to the Plaint) alongwith interest thereon at the rate of 18% per annum from the respective dates till the date of payment and/or realization thereof as claimed ?

(8) Whether Defendant Nos.1 to 3 are jointly / severally liable to pay to the Plaintiffs Rs.17,77,16,876/- (as per the Particulars of Claim at Exhibit "U-1" to the Plaint) alongwith interest thereon at the rate of 18% per annum till the date of payment and/or realization thereof as claimed?

(9) Whether Defendant Nos.1 to 3 are jointly severally liable to pay to the Plaintiffs Rs 9,92,968/- along with further interest on the principal amount of Rs 6,91,270/- at the rate of 18% per annum from the date of suit till actual payment and/or realization thereof (as per Particulars of Claim being Exhibit "AA" to the Plaint) as claimed?

(10) Whether the Plaintiffs are entitled to an order/direction against Defendant Nos.1 to 5 of executing all requisite documents, instruments, agreements, conveyances and/or forms as may be necessary, for transferring, conveying and assuring the exclusive ownership of Byculla Property along with all the buildings and/or structures standing thereon (more particularly described at Exhibit "B" to the Plaint) and the Sukh Sagar Property to the Plaintiffs?

(11) Whether the present Suit is barred by the provisions of the Benami Transactions (Prohibition) Act, 1988 and hence not tenable?

(12) Whether the present Suit is barred by limitation?

(13) Whether the present Suit is bad for mis-joinder of parties and causes of action?

(14) Whether the present Suit is barred by the provisions of Sections 91, 92, 94 and 115 of the Evidence Act, 1872 and hence cannot be granted?

(15) Whether Defendant Nos 7 to 27 are bonafide purchasers for value without notice?

(16) Whether the Plaintiffs are entitled to the injunctive reliefs/injunction orders as prayed for?

(17) What Order and what Costs?

(Emphasis supplied)

12.1 Ten suits which have been filed by the present applicants which are identical in nature. The main prayers in the said suits read as under :-

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a. this Hon'ble Court be pleased to order and declare that the Articles of Agreement dated 17th August, 2010 is valid, binding and subsisting upon the Defendants;

b. The Defendants be directed to specifically perform the Articles of Agreement dated 17th August, 2010 and in furtherance thereof hand over possession of the suit flat being 501 and more particularly described Exhibit A of the Plaint and be further directed to accept c balance consideration of Rs. 20,00,000/- from the Plaintiffs and to do all acts, deeds and things and to execute and register all documents and writings as may be necessary and put the Plaintiffs in possession of the suit flat at Exhibit A hereto;

c. That without prejudice to right to claim possession of the suit flat, this Hon'ble Court be pleased to declare by its order and decree that Plaintiffs are entitled to recover a debt and liquidated demand and compensation towards the rent paid by the Plaintiff in respect of temporary accommodation hired and also the interest paid on the borrowed amount for the purchase of the suit flat, including causing mental agony, torture, tension etc. due to indefinitely delayed possession and injury caused;

d. That, pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to restrain the Defendants, their agents, servants, nominees or any persons claiming under/through them be permanently restrained by an order and injunction of this Hon'ble Court from in any manner creating any third party rights and/or part with possession and/or inducting any third party, and/or creating encumbrance in respect of the suit flat as described in Exhibit A to the Plaint;

e. That, pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay under Order LIX Rule 1 of the Civil Procedure Code and the Court Receiver to take possession of the suit flat and further appoint the Plaintiffs as agents of the Ed. Court Receiver without royalty;

f. Ad-interim relief in terms of prayer clause (d) and (e) above;

g. For cost of the suit;

h. Any other order be passed to as to meet the ends of justice;

(Emphasis supplied)

13. Hence, these ten suits are mainly filed for specific performance of the Article of agreement entered into with the applicants, respectively. Suit filed by the “Purshottam Group” also deal with the said agreements as not being valid and binding on them. So also,

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there is no dispute that ten suits which have now been transferred to the Bombay City Civil Court have been filed only after this Court had passed its Order on 20 October 2012 and on 15 January 2018.

13.1 In 2011 suit filed by “Purshottam Group”, the present applicants are party defendants. Hence, in my view, they can file counter-claim in that suit. Instead of filing counter-claim they have filed independent separate ten suits, claiming specific performance of their respective sale agreement.

14. Considering the fact that both the suits mainly involved around the sale agreements which were entered into between the “Shrichand Group” and the present applicants. Those agreements were entered into between April 2010 to May 2011 after the learned Single Judge had passed an order in the year 2010 which were confirmed by the Supreme Court. Therefore, according to me, the parties are same, so also, the issues involved are the same. There will be duplication of recording of evidence if separate trials are held and there is a likelihood of conflicting judgments being passed. Therefore, to avoid the same, it would be in the interest of justice that the said ten suits be heard along with 2011 suit.

15. Section 24 (1) of the Code of Civil Procedure gives general

power to the High Court to transfer proceedings at any stage. Therefore, the argument on behalf of the respondent nos.1 and 2 that the suit filed by the applicants is still at preliminary stage and the suit filed by them has reached the level of the affidavit of evidence being filed, and the matter is kept for marking of documents, will not hold much ground.

16. Issue No.6 in 2011 suit is with regard to the agreement of sale entered into between the present applicants with “Shrichand Group”. The said “Shrichand Group” is not opposing the present transfer proceedings. The present applicants’ main prayer in their 2018 suits is that of “specific performance of agreement entered into by them with ‘Shrichand Group’ ”. Therefore, the issues in both the suits are likely to be overlapped. Though affidavit of evidence is filed in 2011 suit, the cross-examination has not begun as of date.

17. “Purshottam Group” have themselves made present applicants as party defendants in their 2011 suit. Therefore, even “Purshottam Group” who is opposing the transfer of the suits filed by the applicants from the Bombay City Civil Court to Bombay High Court are of the view that the present applicants should be heard and are necessary parties in the issues to be decided in their suit of 2011.

Therefore, according to me, in the interest of justice to save judicial time, the suits filed by the applicants which have been recently transferred to the Bombay City Civil Court needs to be re-transferred to this Court and to be heard along with 2011 suit.

18. It should also be considered that the respondent “Shrichand Group” is not opposing to the proposition of re-transfer of the applicants suits back to this Court.

19. Hence, the Misc. Civil Application stands allowed in terms of prayer clauses (a), (b) and (c).

(Rajesh S. Patil, J.)