

IN THE CITY CIVIL COURT AT DINDOSHI  
(BORIVALI DIVISION), GOREGAON, MUMBAI

Notice of Motion No.2268 of 2015

in

S.C. Suit No.2348 of 2015

Smt. Meena Vishnu Bhandari & Ors.                      ..Plaintiffs  
V/s.  
M/s. Sheth Sheltors Pvt.Ltd. & Ors.                      ..Defendants

Adv. Mr. M.V. Holamagi for Plaintiffs.  
Adv. Mr. S.D. Mishra for Defendant No.1.  
Adv. Mr. Manoj Pandey for Defendant No.3.  
AGP Mr. Rajesh Chaturvedi for Defendant No.4/State.  
Adv. Mr. R.G. Chaudhary for Defendant Nos.6 and 7.  
None for Defendant Nos.2 and 5.

Coram : His Honour Judge,  
Shri A.S. Waghvase  
(C.R. No.6)  
Date : -29/2/2016

ORAL ORDER

1. Ad-interim prayers are pressed into service which are as under:-

Precisely, the prayers made out at the interim stage are that during the pendency and disposal of the suit and motion, Defendant Nos.1 to 3 be restrained from entering, trespassing, collecting money in the name of Plaintiffs for developing the suit properties mentioned and described in Schedule-A. Secondly, to restrain Defendant Nos.4 and 5 or persons under their authority from passing any development plan, granting permission for construction or development of the suit properties. Thirdly, Defendant

Nos.4 and 5 and persons concerned through them be restrained from entering names of Defendant Nos.1 to 3 in 7/12 Extract and/or Property Card without knowledge of Plaintiffs or sending surveyor in respect of the suit properties.

2. Learned Advocate for Plaintiffs would submit that the predecessor of present Plaintiffs and Defendant Nos.6 and 7 had acquired the properties described in Schedule-A. They were agriculturists and such properties have been devolved on Plaintiffs and are as such, owners, possessors and having right, title and interest in the suit properties. There are 7/12 extract and documents of record of right carrying name of their predecessors. That till date, Plaintiffs have not conveyed the property and it still stands in their name and is in their possession. They have never applied for non-agricultural use and it is still agricultural land. That Defendant Nos.1 to 3 fraudulently, with malafide intention obtained their signatures on some documents and are claiming to have acquired interest thereupon. Learned Advocate points out that the present Plaintiffs have never consented or conveyed or transferred right, title and interest in the suit properties and have not even received the consideration. However, because of act of Defendants, there is likelihood of interest being created in favour of Defendant Nos.1 to 3 which is without consent of Plaintiffs. Their names would be incorporated in the record of right and 7/12 extract and on the basis of which development activities would be undertaken, upon grant of permission by the Corporation authority. As such, as Plaintiffs are owners and have acquired right, title and interest by way of succession and having not parted with property by consenting or giving any conveyance, it

is prayed that ad-interim relief as prayed be granted.

3. Learned Advocate for Defendant No.1 opposed ad-interim as well as suit itself by submitting that the present suit is filed by suppressing material facts from this Hon'ble Court i.e. fact regarding pending of the proceedings before the Hon'ble High Court. Learned Advocate for Defendant No.1 took this court through the entire compilation wherein there are annexures, having Consent Terms and execution proceedings are underway before Hon'ble High Court. He took this court through all the clauses of the Consent Terms and it is pointed out that including Plaintiffs, the other persons have consented for transfer of right, title and interest and have received consideration thereupon and possession has also been parted with. Learned Advocate demonstrated by taking this court to 7/12 extract wherein name of one Dimple Realtors is appearing in 7/12 extract. It is further pointed out that there is registered Agreement with such Dimple Realtors. Learned Advocate for Defendant No.1 poses the question as to what right present Plaintiffs have at this point of time when decree under Consent Terms is under consideration and when there is suppression to that effect. It is pointed out that there is no pleading or whisper in the plaint narrating such background of proceedings pending before Hon'ble High Court. He submits that in fact, execution proceedings were initiated in June, 2014 and inspite of knowledge to that extent, Plaintiffs have lodged instant suit, that too, in August, 2015 and as such, bonafides of Plaintiffs are questioned. Learned Advocate took this court through the Consent Terms and the orders passed by Hon'ble High Court from time to time and copy of the same are placed on record. Lastly, it is submitted that

Plaintiffs are not in possession. There is no case for grant of any relief as prayed. It is prayed that ad-interim relief be refused. On the point of suppression of material facts and on the issue of decree on the consent terms, he seeks reliance on various rulings as under:-

- (1) S.P. Chengalvarayan Naidu V/s. Jagannath, AIR 1994 SUPREME COURT 853
- (2) Tulsan V/s. Pyare Lal & Ors. (Civil Appeal No.4329 of 2006 (arising out of SLP(C) Nos.16824-16825 of 2004,) decided by Hon'ble Apex Court on 29/9/2006)
- (3) Chiranjilal Ramachandra Loyalka & Ors. V/s. Life Insurance Corporation of India representing Neptune Assurance Co. Ltd. (Appeal No.650 of 1955 decided by Hon'ble Bombay High Court on 16/4/1958)

4. Learned AGP for Defendant No.4-State submitted that on going through the prayers in the motion, it is clear that no relief is sought against the present Defendant No.4 and reliefs are directed against Defendant No.5 Corporation. He also submits that suit and motion is misplaced. No case being made out for grant of any relief, it is prayed that ad-interim be refused.

5. Heard respective sides. At this juncture, Plaintiffs are concerned with maintaining status-quo as regards to the property on the ground that they being owners are still in possession and they have not conveyed the property yet and as such, Defendant Nos.1 and 3 having played fraud for carrying out development activity be restrained from

doing so. Similarly, concern is shown for direction to the State Government i.e. Collector for not to send surveyor or to enter the name of Defendant Nos.1 to 3 in 7/12 extract and record of right. Similar directions are also sought against the Corporation thereby restraining them from considering or sanctioning any development plan.

6. In order to seek relief as prayed, it is incumbent upon Plaintiffs to first make out prima facie case for grant of relief of ad-interim. In support of their claim as regard to the right, title and interest in respect of the suit property as successor, reliance is sought on the schedule of the property at Exhibit-A, Rough sketch at Exhibit-A1. Such rough sketch at this stage cannot be taken aid of because it is without any proper description, area or boundary. Reliance is also sought on family tree wherein names of Plaintiffs are appearing and there is no dispute to that extent from the other side. Though 7/12 extract carry names of one Bhandari family, the same also carry names of one developer by name M/s. Dimple Realtors Pvt. Ltd. in Other Right Column and there is mutation entry to that effect bearing No.1821. Therefore, 7/12 extract shows that the transaction has taken place with Dimple Realtors Pvt. Ltd. and there is mutation entry to that extent of which there is entry in Other Right Column. Therefore, the aobverefereed documents are falling short to hold that as on today, Plaintiffs are in possession to protect the same. On the other hand, learned Advocate for Defendant No.1 took this court through the Consent Terms filed in Suit No.1425/2002 before Hon'ble High Court between Sheth Shelters Pvt. Ltd. and Smt. Gangabai Jagannath Bhandari & Others wherein there are as many as over 33 Defendants and statement is

made across the bar by the learned Advocate for Defendant No.1 that some of the Plaintiffs are Defendants therein. It is further informed that decree has been drawn based on such consent terms. Further statement is made across the bar that Plaintiffs in said suit are made Defendant No.1 herein and Defendants therein include the present Plaintiffs. On going through the Consent Terms, it is seen that Consent Terms are in respect of the land bearing C.T.S. No.692, 693, 710, 721 of various measurements situated at Village-Kandivali. If this is compared with the schedule of the property given at Exhibit-A of the plaint, we find that in the suit also, the suit properties are said to be including C.T.S. No.692, 693, 710, 721. Thus, it has been demonstrated that the suit properties in the present suit and the suit properties in Consent Terms of which decree of execution proceedings underway before Hon'ble High Court is the same. It is further informed by the learned Advocate for Defendant No.1 that the execution proceedings before Hon'ble Court are at fag end. This has not been refuted or rebutted by learned Advocate for Plaintiffs. It also appears that there is reference to the consideration being paid to the parties therein. Para No.18 of the Consent Terms dated 2/5/2002 clearly shows that there is conveyance and assignment in respect of undivided share and right, title and interest in favour of Plaintiffs therein or their nominee. Similarly on being pointed out, it is found that in the said Consent Terms, clauses 23, 24 and 25 clearly show that vacant and peaceful possession of the lands which are suit properties are already handed over to the Plaintiffs therein who is said to be Defendant No.1 herein. Therefore, aspect of possession is shown to be already parted with by the persons including Plaintiffs herein. In clause 30, there is reference that the development rights are conferred on

Plaintiffs therein in respect of C.T.S. Nos.692, 693, 710 and 721 which is the same suit property in the present suit. Therefore, the above discussion clearly shows that at the time of filing of suit, Plaintiffs are not in possession. Secondly, there are execution proceedings of a decree pending before Hon'ble High Court in respect of the present suit land. Plaintiffs failed to establish that they are still in possession and there is apprehension of depriving of their right, consequently, no case made out for grant of ad-interim relief. I, therefore, proceed to pass the following order:-

ORDER

Ad-interim relief is refused.

29/2/2016

(A.S. Waghwase)  
Judge,  
City Civil Court,  
(Borivali Division),  
Dindoshi.

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Dictated on 24/2/2016

Transcribed on 9/3/2016

Checked & signed by HHJ on : 9/3/2016

"I affirm that the contents of this PDF file order are the same, word to word, as per the original order."

Name of steno with Post

:- Atul S. Bhogte  
Stenographer (H.G.)

-Name of the Judge (with Court No..)

:- H.H.J. Shri A.S. Waghwase  
(C.R.No.6)

- Date of pronouncement of order

:- 29/2/2016

- Order signed by the P.O. On

:- 9/3/2016

- Order uploaded on

:- 11/3/2016