

MHSCA20013332017

IN THE COURT OF SMALL CAUSES, AT MUMBAI

Exh. 9

IN

R.A. D. Suit No. 679 of 2017

Mrs.Yasmeen Mohammed Pervez Ansari
and ors.

....Plaintiffs

V/s.

Afzal Sopariwala & ors.

.....Defendants

Coram :Shri P. D. Zambre
Judge, C.R. No. 22
Dt.: 25/10/2018

ORDER BELOW EXH:-

The plaintiffs have filed this application to restrain the defendant No.1 from transferring the suit premises to the defendant No.2 and 3 , restrain the defendant no. 1 from accepting rent from defendant No.2 and 3, permit the plaintiff to deposit the rent and to restrain defendant No. 2 and 3 from closing interconnecting door between suit premises and room No.1 vide Order XXXIX, Rule 1 of the Code of Civil Procedure (for short the Code).

2. In short it is the application of the plaintiffs that plaintiff No.1 is wife of original tenant Parvez. Plaintiff No. 2 to 4 are daughters of Pervez. Defendant No.1 is landlord, defendant

No.2 is mother-in-law of plaintiff No1. Defendant No.3 is brother in law of the plaintiff No.1. Original tenant Parvej died in the year 2009. He has acquired possession of the suit premises prior to marriage of plaintiff No.1 with Parvez. Defendant No.2 and 3 are residing in room No.1 during life time of Parvez. After death of Parvez defendant no.2 and 3 started harassment to the plaintiffs by entering into the suit premises and obstructing peaceful possession over the suit premises. The plaintiffs have also apprehension that they will transfer the rent receipt in the name of defendant No. 2 and 3. If it is happened plaintiff will suffer loss which can not be compensated in terms of money. They have filed suit for declaration. But time will require to decide suit on merit. Therefore, the plaintiffs have filed this application for interim injunction and interim deposit of rent and prayed to allow the application.

3. Say of the defendant is called. Defendant No.2 and 3 strongly objected the application contending that when suit premises is acquired Parvez was minor. He was jobless but due to love and affection, Yunus Ansari get the rent receipt transferred in the name of Parvez and all are resided in the same premises and room No.1, jointly. Hence, the plaintiffs have no right to claim any tenancy in respect of the suit premises. It is contended that plaintiff Nos. 2 to 4 are born in the room No.1. Husband of plaintiff No.1 is also died

in room No.1. They are residing in room No.1 and suit premises jointly. Therefore, they all are entitled for joint tenancy and prayed to reject the application contending that balance of convenience does not lie in their favour and there is no question of irreparable loss in absence of injunction.

4. The points for determination along with my findings thereon are as under :

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the plaintiffs have prima-facie case ?	Partly Yes
2) Whether the balance of convenience lies in favour of the plaintiffs ?	Partly Yes
3) Whether the plaintiffs will suffer irreparable loss if injunction is not granted ?	Partly Yes
4) What order ?	As per final order.

REASONS

AS TO POINT NOS. 1 TO 3:

5. Point Nos. 1 to 3 are interlinked and inter-related with each other. The evidence on all the three points are same. Therefore, to avoid repetition of facts and evidence, I opt to decide all 3 points simultaneously. Moreover, for the purpose of precision

of discussion, it will be legal and proper to mention admitted facts prior to discussion. Hence, I opt to mention those facts prior to discussion of main points. Plaintiff No.1 is wife of Parvej Ansari who is original tenant. Plaintiff No.2 to 4 are daughters of plaintiff No.1 and deceased Parvej Ansari. Defendant No.1 is landlord of suit premises, defendant No.2 is mother in law of plaintiff No.1 and grand-mother of plaintiff Nos. 2 to 4. Defendant No.3 is brother in law of plaintiff No. 1 and uncle of plaintiff Nos.2 to 4 are the facts which are not in dispute. Only contention of the plaintiffs is that it is self acquired property of Parvez and at the time of death only plaintiffs are residing with Parvez. Therefore they are entitled for tenancy rights which is denied by defendant No.2 and 3 contending that the plaintiffs have no prima facie case, balance of convenience does not lie in favour of the plaintiffs and they will not suffer a loss in absence of injunction. Hence, point Nos.1 to 3 are before the court for determination.

6. To show prima-facie case, the plaintiffs have to show that plaintiffs are having legal right and it is going to be infringed. Total four prayers are made by the plaintiffs in the application. Out of which, first prayer is to restrain the defendant No.1 from transferring rent receipt of the suit premises on the name of defendant Nos. 2 and 3. It is contention of the plaintiffs that they

are the legal heirs and actual residing in the suit premises at the time of death of Parvez. The said fact is not denied by the defendants but it is contention of defendant Nos.2 and 3 that defendant Nos.2 and 3 are also residing with them. But there is no document on record to show that defendant Nos. 2 and 3 are residing in room No.2 except passport of defendant No.3. There is no other document on record other than passport of defendant No.3. On the contrary, the plaintiffs came with ration card which shows plaintiffs are family member of deceased Parvez. The plaintiffs have legal right in respect of transfer of rent receipt in respect of the suit premises. Moreover, it is contention of both the parties that they should be allowed to deposit the rent. In the circumstances, possibility of infringement of legal right cannot be ruled out. Hence, the plaintiffs have prima facie case for prayer of restraining defendant No.1 from transferring rent receipt in the name of defendant Nos. 2 and 3.

7. Moreover, in respect of deposit of rent and in respect of transfer of rent receipt the plaintiffs have no prima-facie case, because the right of the tenancy of the parties are yet to be decided. Therefore, there is no question of accepting rent from defendant Nos. 2 and 3 prior to decision of declaration of tenancy. In the circumstances, at this stage, it will not be proper to decide

that aspect. Hence, in respect of permission to deposit the rent and accepting rent from defendant Nos. 2 and 3, the plaintiffs have no prima-facie case. Therefore, there is no question of infringement of legal right.

8. It is one of the prayer that defendant No.1 be restrained from accepting the rent of the suit premises. But it is against the provisions of law. I have already held that for the purpose of transfer of rent receipt, the plaintiffs are having prima facie case. Therefore, it will not be proper to restrain to defendant No.1 from accepting rent because as per section 15 of Maharashtra Rent Control Act, non payment of arrears of rent and permitted increases is one of the ground of eviction of the tenants. Hence, at this stage it will not be proper to restrain the defendant No.1 from accepting the rent. Hence, in respect of restraining the defendant No.1 from accepting rent plaintiffs have no prima facie case.

9. It is the contention of the plaintiffs that room No.1 and 2 are self contained premises. The defendant No.2 and 3 are disturbing possession of the plaintiffs over the suit premises. Therefore, the plaintiffs should be allowed to close interconnecting door or locking interconnecting door between the suit premises and room No. 1 and defendant No.2 and 3 be restrained from

closing the interconnecting door. But defendants came with specific case that they are jointly residing in the suit premises. Both the rooms are not self contained rooms. In one room there is kitchen and in another room there is toilet and bathroom. But, it is one of the issue before court. Hence, it is not proper to comment upon that aspect. In the circumstances at this stage it will not be proper to restrain the defendants from obstructing plaintiff no. 1 from closing interconnecting door because as per birth certificate produced on record, plaintiff No. 2 to 4 address of plaintiffs is mentioned as room No.1 which is other than suit premises. Moreover, it is also admitted fact that initially in death certificate of Parvez, address is mentioned as room No.1 and later on it is corrected. That thing is also supporting the contention of the defendants to some extent but should be decided at the stage of final hearing and at this stage it cannot be said that the plaintiffs have prima facie case for prayer of restraining the defendants from obstructing the plaintiffs to close interconnecting door.

10. For entitlement of injunction the plaintiffs have to prove that balance of convenience lies in their favour and they will suffer irreparable loss in absence of injunction. As per discussion in paragraph No.6 of this order, it is proved to the satisfaction of the court that plaintiffs have legal right in respect of transferring rent

receipt and possibility of infringement of right cannot be ruled out in view of relation between the parties and other circumstances come on the record. In the circumstances, if the defendants are not restrained and defendants succeed to transfer the rent receipt. Then, definitely prejudice will be caused to the plaintiffs which cannot be compensated in terms of money. In the transfer of rent receipt plaintiffs will suffer irreparable loss, balance of convenience is also in favour of plaintiffs but for prayer of restraining the defendant No.1 from accepting rent, permitting the plaintiffs to deposit the rent and restraining defendants from obstructing plaintiffs from closing or locking the interconnecting door, there is no balance of convenience in favour of plaintiffs and possibility of irreparable loss in absence of injunction order. Hence, I answer point Nos. 1 to 3 in the affirmative to the extent of transfer of rent receipt in the name of defendants and in the negative for other prayers.

AS TO POINT NO.4:

11. The plaintiffs establish her right in respect of transfer of rent receipt. Hence, defendants are liable to restrain from transferring rent receipt of the suit premises in the name of defendant Nos. 2 and 3 or their agents till conclusion of trial but

prayer of plaintiffs restraining defendant No.1 from accepting rent permitting the plaintiffs to deposit the rent and restraining defendants from obstructing the plaintiffs from closing interconnecting door is liable to be rejected. Hence, I answer point No. 1 to 3 accordingly and in answer to point No.4, I pass following order.

ORDER

1. The defendants are restrained from transferring rent receipt of the suit premises in the name of defendant Nos. 2 and 3 or their agents till disposal of the suit.
2. Prayer of the plaintiffs restraining defendant No.1 from accepting rent, permitting the plaintiffs to deposit the rent and restraining defendants from obstructing the plaintiffs from closing interconnecting door is rejected.
3. Costs of the application will follow the event.

Mumbai
Date : 25/10/2018

(P. D. Zambre)
Judge, C.R. No.22

Order dictated on : 25/10/2018
Order transcribed on : 03/11/2018
Order printed & signed on : 12/11/2018

