

IN THE COURT OF SMALL CAUSES, AT MUMBAI

Order below Exhibit No.10

IN

R.A.E. Suit No.1284 of 2022

1. Mr Vijay Anant Nagwekar & others ... Plaintiffs

***Versus***

1. Madhavi Vishwanath Tawde & others ... Defendants

Mr. Saurabh J. Dhuri, Ld. Advocate for the Plaintiffs.

Mr. S.J. Ghatge, Ld. Advocate for the Defendant No.1.

Mr. Jayesh Bhatt, Ld. Advocate for the Defendant Nos.2 to 7.

Ms. Supriya Jaware Sawant, Ld, Advocate for the Defendant No.8

Ex-parte against defendant No.9.

**Coram : Smt. M.D. Kamble,  
Judge, C.R. No.14  
Date : 04/05/2024.**

**ORAL ORDER :**

The present application is filed by the plaintiffs to restrain the defendants from parting with the possession of the suit premises or any part thereof and/or creating any third party rights therein during pendency of the suit.

**2. Brief facts of the application are as follows :-**

The plaintiffs have filed this suit for eviction on the grounds of reasonable and bonafide requirement of the plaintiffs and non-user in respect of the suit premises. It is the contention of plaintiffs that the defendant No.1 is the tenant in respect of the suit premises. However, defendant No.1 is not using/occupying the suit premises and it is kept locked and unused by the defendant No.1 for continuous period of more than six months for the purpose for which the same were let. The defendant No.1 does not require the suit premises for her residential purpose.

3. It is the further contention of plaintiffs that in the month of December/January 2022 the plaintiffs observed that the defendant No.1 is regularly bringing the unknown persons to the suit premises with intent to dispose off the suit premises. The defendant No.1 has put up advertisement for selling the suit premises on the website/online Portal. The plaintiffs apprehend that the defendants may part with possession of the suit premises to third persons and create illegal tenancy in respect of the suit premises for monetary consideration. Therefore, it is necessary to restrain the defendants from parting with possession of the suit premises.

4. The defendant No.1 has filed reply at Exh.22 and submitted that the present application is nothing but a repetition of the averments made in the plaint which she has already denied in her written statement. She submitted in her written statement that the plaintiffs never shown any interest or rights in the suit property either as a co-owners or managing and looking after all the affairs of the suit property. The plaintiffs have sufficient and adequate premises in their possession and the plaintiffs' requirement is neither reasonable nor bonafide. It is specifically denied that the defendant has brought unknown persons in the suit premises with intent to dispose off the suit premises. The plaintiffs have no prima facie case for grant of relief claimed. Hence, application is liable to be rejected.

5. The defendant Nos.2 to 7 filed puris at Exh.25 to consider their written statement as reply to the present application. As per the contentions of these defendants, the suit property was purchased by their late father and due to brotherly love and affection plaintiffs' father name was included in the property by the late father of defendants. The father of defendant Nos.3 to 7 was looking after

the affairs and management of the suit property including collection of rent from tenants and payment of taxes etc. After the death of their father, defendant Nos.3 to 7 have been looking after the management of the property. Neither the father of plaintiffs nor the plaintiffs ever looked after or managed the property in any manner whatsoever. The suit building is in dilapidated condition and it requires re-development. The tenants of the suit building approached these defendants for re-development. All the other adverse contentions made against these defendants in the application are denied by them. The application is filed with malafide intention and is liable to be rejected.

6. The defendant No.8 filed puris at Exh.26 to consider her written statement as reply to the present application but due to non-compliance of order below Exh.21, the written statement of defendant No.8 is not taken on record. Hence, application proceeded without reply of defendant No.8.

7. Suit proceeded ex-parte against defendant No.9.

8. From the rival contentions made in the application and reply, following points arise for determination, to which I have recorded my findings with reasons thereon as under :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiffs have made out prima facie case ?	Order accordingly.
2.	Whether balance of convenience lies in favour of plaintiffs ?	Order accordingly.
3.	Whether plaintiffs would suffer irreparable loss, if application is rejected ?	Order accordingly.

4.	What order ?	As per final order.
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### **:: REASONS ::**

9. Perused the record. Heard Ld. Advocates for respective parties at length.

#### **As to Point Nos.1 to 4 :-**

10. The learned advocate for the plaintiffs submitted that the plaintiffs alongwith defendant Nos.2 to 9 are co-owners/landlords in respect of the suit property. Defendant No.1 is tenant in respect of the suit premises. The defendant No.1 has shown the suit premises to different persons. It has also come to the knowledge of plaintiff that defendants have published an online advertisement for disposing of the suit property. The plaintiff came to know that the defendant Nos.1 to 9 are consulting with the builders and trying to dispose off the suit premises illegally. Hence, it is necessary to restrain defendant Nos.1 to 9 from parting with possession of the suit premises.

11. On the other hand, the learned advocates for the defendant Nos.1, 2 to 7 and 8 submitted that defendant Nos.2 to 7 are co-owners in respect of the suit premises. The father of defendant Nos.2 to 7 was looking after the affairs of the suit property. After the death of their father, these defendants are looking after the affairs of the suit property. The plaintiffs have filed the present suit without the consent of these defendants. Hence, the suit is not maintainable. These defendants never intended to transfer the suit premises to third person. Hence, the application is liable to be rejected.

12. From the perusal of contentions made in the application it reveals that, the only apprehension of plaintiffs in the present application is that the defendant Nos.1 to 9 will create third party interest or will induct any third person in the suit premises. The plaintiffs have not specifically mentioned any incident to substantiate the said apprehension in respect of the suit premises. It is admitted position that the plaintiffs and defendant Nos.2 to 9 are co-owners in respect of the suit premises. Defendants fairly submitted that they have no intention to transfer the suit premises to any other person. During the course of arguments the learned advocate for the defendants pointed out an order in Interim Application No.5 of 2024 in Suit No.232 of 2023 dated 12.03.2024 passed by the Hon'ble High Court. The parties herein are the parties before the Hon'ble High Court in respect of redevelopment of suit property. The Hon'ble High Court in its order dated 12/03/2024 observed that ,

6. "Considering the material on record, this Court is of the opinion that the plaintiffs along with the defendants, particularly those represented by counsel in this Court today, ought to sit together to arrive at an appropriate agreement for redevelopment of the suit property. It appears that none of the co-owners are against redevelopment of the suit property and therefore, it would be only in the interest of all the parties that they sit together and work out an agreement for redevelopment of the property, so that the concerned authority can take appropriate steps in the matter. This would also facilitate the parties in engaging an appropriate developer for the purpose of redevelopment.

7. During the process when the parties would engage with each other in the light of the observations made hereinabove, it would be appropriate that none of the parties create any situation that would precipitate restraint orders from this Court.

8. In view of the above, the parties are directed to reach out to each other in order to arrive at an appropriate arrangement for redevelopment of the suit

property. The parties shall inform this Court on the next date of listing about the steps taken in that regard.”

In view of the above observations by the Hon'ble High Court, the parties are already directed not to create any situation which would precipitate restraintment orders from the Hon'ble High Court. Therefore, neither plaintiffs nor these defendants can create third party interest in respect of the suit premises until decision in the said Suit No.232 of 2023 in respect of the suit property. The defendant No.1 being tenant cannot create third party interest or cannot induct any third person in the suit premises without prior consent of landlords. The parties are already directed to sit together and work out on agreement for redevelopment of the suit property by the Hon'ble High Court. Considering the submissions of learned advocate for the defendants that the defendants have no intention to part with possession or create third party right in respect of the suit premises, I answer point Nos.1 to 3 accordingly and proceed to pass the following order.

### **ORDER**

1. Application (**Exhibit-10**) is allowed subject to order of Hon'ble High Court in Suit No.232 of 2023.
2. The defendants are directed not to part with possession or create third party rights in respect of the suit premises till disposal of present suit.
3. No order as to costs.

[M.D. Kamble]

Judge, [Court Room No.14]

Court of Small Causes, Mumbai.

Date : 04/05/2024.

Order Typed on : 04.05.2024

Order checked & signed on : 13.05.2024