

**IN THE COURT OF SMALL CAUSES, AT MUMBAI****Exh. 9  
IN  
RAD Suit No.1903 of 2016  
MHSCA20044592016**

Mrs.Sharifa Mohammed Yunus Ansari ....Plaintiff

V/s.

Mrs.Yasmeen Mohammed Pervez Ansari and ors. ....Defendants

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

**ORDER BELOW EXH:-**

The plaintiff has filed this application for interim injunction restraining defendant No.1 from putting any person in possession of the suit premises, disturbing the plaintiff's possession over the suit premises, from transferring the rent bill of the suit premises in the name of any third person than the plaintiff, restraining defendant No.5 from collecting rent of the suit premises from the defendant no.1 vide order Exh XXXIX, Rule 1 of the Code of Civil Procedure (for short the Code).

2. In short it is the application of the plaintiff that husband of the plaintiff Mohamed Yunus Ansari died in the year 2012, and her elder son Parvez died on 4/3/2009. During life time of her husband, her husband acquired the suit premises and room No. 1 in the year 1980. But due to love and affection, one of the room is entered in the name of husband of defendant No.1. But all are residing jointly. The suit premises was acquired when Parvez was minor. It is acquired from Norbert Mescarenhas Alphanso. Husband of defendant No.1 married with defendant No.1 in the year 1996. Parvez died in the year 2009 leaving behind defendant Nos.1 to 4 and plaintiff as legal heirs. All are residing with Parvez. But after death, defendant No.5 was trying to transfer rent bill to defendant No.1 with collusion without any legal right. Defendant No.1 has threatened the plaintiff that she will forcefully dispossess her and other sons of plaintiff. Therefore, she has filed the suit. It is her apprehension that defendant No.1 to 4 put any person in possession of the suit premises or transfer rent bill in the name of defendant No.1 to 4. Hence, filed this application and prayed to restrain the defendants and prayed to allow the application.

3. Say of the defendants is called. Defendant No.1 to 4 objected the application contending that plaintiff has no legal right in the

suit premises. She is residing in adjacent room i.e. room No.1. Defendant Nos. 1 to 4 are residing with Parvez at the time of his death. The suit premises was acquired by Parvez of his own and not by Yunus Ansari. Therefore, plaintiff has no legal claim over the suit premises. All the contents of the application are denied and prayed to reject the application. Defendant No.5 has also filed reply. He has contended that he is not aware of facts contended in the application and therefore, denied the application and prayed to reject the application. He has also contended that plaintiff could not be entitled for claiming tenancy of the suit premises and prayed to reject the application.

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. The plaintiff is mother of Parvez Ansari who is original tenant. Defendant No.1 is wife of Parvez Ansari. Defendant Nos.2 to 4 are daughters of Parvez Ansari and defendant No.1. Defendant No.5 is landlord of the suit premises. The plaintiff is mother in law of defendant No.1 and grand-mother of defendant No. 2 to 4 are the facts which are not in dispute. Only contention of the plaintiff is that it is self acquired property of Yunus Ansari and rent receipt is taken on the name of Parvez due to love and affection. Moreover, she was residing with Parvez at the time of his death. Therefore, she is entitled for tenancy rights which is denied by defendant Nos. 1 to 4 contending that the plaintiff has no prima facie case, balance of convenience does not lie in favour of the plaintiff and she 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 plaintiff has to show that plaintiff is having legal right and it is going to be infringed. Total four prayers are made by the plaintiff in the application. Out of which, first prayer is to restrain defendant No.1 from putting any person in possession of the suit premises and third prayer is not to transfer rent receipt in name of defendant No.1. It is not in dispute that the plaintiff is one of the legal heir of Parvez. It is her claim that she was residing with Parvez at the time of death which is denied by the defendants but as per death certificate, it appears that Parvez was residing with the plaintiff. In the circumstances, prima-facie it appears that there is legal right in favour of the plaintiff in respect of her right to claim tenancy. Moreover, it is come on record that defendant Nos.1 denies her residence with Parvez at the time of death of Parvez. It is also contention of the plaintiff that the suit premises is acquired by her husband but due to love and affection rent receipt is transferred in the name of Parvez which is also denied by defendant No.1. Hence, possibility of putting any third person in possession of the suit premises and transferring rent receipt in the name of defendant No.1 can't be ruled out. If this is happened, definitely there is possibility of

infringement of legal right of the plaintiff. Hence, for those two prayers, there is prima-facie case made out by the plaintiff. But it is prayed that rent receipt shall not be transferred in the name of any other person than the plaintiff. But, till decision of the suit, it will not be legal and proper to transfer it on the name of the plaintiff. Hence, it will have to be directed not to transfer rent receipt on the name of any member.

7. It is one of the prayer that defendant No.5 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 plaintiff is having prima facie case. Therefore, it will not be proper to restrain defendant No.5 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.5 from accepting the rent. Hence, in respect of restraining the defendant No.5 from accepting rent, the plaintiff has no prima-facie case. It is one of the prayer that defendant No.1 be restrained from obstructing the possession of the plaintiff over the suit premises. It is disputed by defendant No.1 that the plaintiff is in possession of the suit premises. The document on record does not support

contention of the plaintiff. Possession of the plaintiff over the suit premises is fact in issue. Hence, it can not be said that the plaintiff has prima-facie case.

8. For entitlement of injunction the plaintiff has to prove that balance of convenience lies in her favour and she 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 putting any person in possession of suit premises and 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 and put any person in possession of the suit premises. Then, definitely prejudice will be caused to the plaintiff which cannot be compensated in terms of money. In the circumstances, in case of transfer of rent receipt and putting any person in possession of the suit premises, the plaintiff will suffer irreparable loss. Hence, balance of convenience is also appeared in favour of the plaintiff. But for prayer of restraining the defendant No.5 from accepting rent, disturbing the possession of the plaintiff over the suit premises, there is no balance of convenience in favour of the

plaintiff 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 putting any other person in possession of the suit premises and in the negative for other prayers.

**AS TO POINT NO.4:**

9. The plaintiff establishes her right in respect of transfer of rent receipt and putting any person in possession of the suit premises. Hence, defendants are liable to restrain from transferring rent receipt of the suit premises in the name of defendant No.1 or putting any third person in possession of the suit premises till conclusion of trial but prayers of the plaintiff restraining defendant No.5 from accepting rent and obstructing possession of the plaintiff over the suit premises 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. Defendant Nos. 1 is restrained from putting any person in possession of the suit premises till disposal of the suit.

2. Defendant Nos. 1 to 5 are restrained from transferring rent receipt in respect of the suit premises till disposal of the suit.
3. Prayers of the plaintiff disturbing the plaintiff's possession over the suit premises, restraining defendant No.5 from collecting rent of the suit premises from the defendant no.1, are 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