

CNR No.	MHSCA1-001206-2017		
Presented on	28-11-2017		
Registered on	04-01-2018		
Decided on	28-08-2019		
Period required for Disposal	Years	Months	Days
	01	09	00

**IN THE COURT OF SMALL CAUSES AT MUMBAI
(APPELLATE BENCH)**

MISC. APPEAL NO.01 OF 2018

IN

ORDER BELOW EXHIBIT-9

IN

L.E. SUIT NO.45 OF 2017

1. Lalita Mohan Pawar,
aged about 66 years, Occ.: Housewife,
2. Uday Krishna Pawar
aged about 54 years, Occ.: Service
3. Manoj Krishna Pawar
aged about 48 years, Occ.: Service,
All residing at Chawl No.13, Aga Hall,
Nesbit, mazgaon Mumbai-400 101. ... Appellants
(Org. Defendants)

V/s.

Vikrant Rajaram Survey,
adult, age: 53 years, Occu.: Service,
residing at Room No.4, Building No.2,
B-Wing, Ashtavinayak Complex,
Katrap, Badlapur (East), District-Thane. ... Respondent
(Org. Plaintiff)

Roseline Nadar, Advocate for the Appellants
Aniruddha Sapre, Advocate for the Respondent

**Coram : A.Z. Khan
Ad-hoc District Judge
and
S.R. Patil
Judge
C.R. No.4
Date : 28th August, 2019.**

JUDGMENT :- (Per S.R. Patil, Judge)

The respondent (original plaintiff) has filed Exhibit-9 for interim injunction restraining appellants (original defendants) from surrendering possession of suit premises to original owner and from entering into any kind of agreement with original owner in respect of suit premises. The Learned Trial Judge has allowed that application and passed interim injunction against appellants (defendants). Being aggrieved and dissatisfied with the order passed by the Learned Trial Court below Exhibit-9, appellants (defendants) have filed present Misc. Appeal.

2. For the sake of brevity and convenience, the parties are hereinafter referred by their original nomenclature.

3. **Description of the property** : Room No.5, Patra Chawl No.13, Aga Hall, Nesbit Road, Mazgaon, Mumbai-400 010, situated in 'E' Ward, Block No.287, bearing C.S. No.376 of Mazgaon Division, approximately 200 sq. ft. More particularly described in para-1 of the plaint, (hereinafter referred as 'suit premises').

4. **The facts of the application are as under:-**

It is the case of the plaintiff that, his great grandmother Dhondibai Dhaku Survey was original tenant in suit premises. She

acquired tenancy rights in suit premises somewhere in the year 1944-1945. Rent receipts in respect of suit premises are still issued in the name of his great grandmother.

5. That, defendants are children of Krishna Govind Pawar. His great grandmother Dhondibai Survey permitted Krishna Pawar to reside in the suit premises as gratuitous licensee. Thus, Krishna Pawar and after his death, defendants are in possession of suit property.

6. Dhondibai Survey died in the year 1965. Mother of plaintiff i.e. Kumudini Rajaram Survey inherited the tenancy rights in suit premises being only heir of Dhondibai Survey in the year 1987.

7. Krishna Pawar i.e. predecessor of defendants had filed R.A.D. Suit No.2917 of 1987 against plaintiff's mother. His mother has contested that suit. The said suit was dismissed by the Learned Trial Court vide judgment and decree dated 18th December, 2002. Krishna Pawar had challenged that judgment and decree by appeal No.22 of 2004. The said appeal came to be dismissed on 22nd July, 2011.

8. It is further case of the plaintiff that, after dismissal of appeal, Krishna Pawar passed away. In view of judgment and decree passed in R.A.D Suit No.2917 of 1987 and Appeal No.22 of 2004, deceased Krishna Pawar failed to prove his tenancy rights in suit premises. The Learned Trial Court and the Learned Appeal Court have held that, the plaintiff's mother Kumudini Survey is entitled to get tenancy rights in suit premises.

9. Thus, after demise of Krishna Pawar, plaintiff's mother

repeatedly requested defendants to vacate the suit premises. She has also sent notice dated 22nd August, 2011 & 3rd February, 2012 and called upon defendants to vacate the suit premises. Defendants failed to vacate the same. Thereafter, the plaintiff has also sent a notice dated 22nd December, 2014 and asked defendants to vacate the suit premises. Defendant No.2 has sent reply and refused to vacate the suit premises. Therefore, plaintiff constrained to file suit against defendants for possession of suit premises.

10. It is further case of plaintiff that, suit premises is in possession of the defendants. They might, in collusion with original owner, surrender possession of suit premises to original owner with intent to defeat tenancy rights of the plaintiff. The plaintiff is also having apprehension that, with intent to defeat his rights, defendants may execute any document in favour of original owner in respect of suit premises. If, defendants do so, plaintiff will suffer injustice and irreparable loss. Thus, till decision of the suit, it is necessary to restrain defendants from surrendering the possession of the suit premises directly to original owner also from executing any document with original owner in respect of suit premises. Hence, the application.

11. Defendants contesting the suit and application, filed their written statement Exhibit-15 as well as reply Exhibit-76. Defendants have admitted that their predecessor had filed R.A.D. Suit No.2917 of 1987 and Appeal No.22 of 2004. The said suit and appeal were dismissed on merits. They have also admitted that, their predecessor has filed above suit against plaintiff's mother.

12. It is the case of the defendants that, suit property is in their exclusive possession. The fact that, defendants are licensees in suit premises is admitted by plaintiff's mother in R.A.D. Suit No.2917 of 1987. That, after demise of Janabai, who was daughter in law of Dhondibai, suit property was came into exclusive possession and occupation of defendants' family. The plaintiff or his mother never resided in the suit property. Father of the plaintiff, first time, in the year 1944 came to Mumbai and started working in Hind Cycles since 1945. He came in contact with Dhondibai, who was tenant in suit premises. Dhondibai allowed plaintiff's father to stay in suit premises. That, in the year 1946, defendants father brought his wife to Mumbai and both of them were started residing with Dhondibai in suit premises. That, defendants' father was looking after Dhondibai and Janabai. Dhondibai died in the year 1995. At the time of her death, defendants' father was residing in the suit premises. The possession of defendants father continued after death of Dhondibai. Thus, being family member of Dhondibai, defendants' father is entitled to get tenancy rights in suit premises. It is further case of the defendants that, after death of Dhondibai, Janabai never claimed any right in suit property.

13. In June 1987, first time plaintiff's mother, with ulterior motive started staying with defendants' father in suit premises. At that time, she told defendants' father that, Dhondibai was her grandmother. Thereafter, plaintiff's mother started preparing documents showing suit premises as her residential address. Therefore, defendants' father has filed R.A.D. Suit No.2917 of 1987 for declaration of his tenancy rights in suit premises. That, plaintiff's

mother or the plaintiff is not concerned with tenancy rights in suit premises. Therefore, suit is not tenable. Defendants are tenants in suit premises. They have every right to surrender possession of property to original owner. If, original owner wants to redevelop the property, they have also right to get possession in new building. They have also right to enter into an agreement with original owner, if there is a redevelopment. Plaintiff has no right to claim interim injunction against the defendants. Hence, prayed for dismissal of application.

14. After considering pleadings and evidence laid by both the parties also arguments advanced by both Learned Advocates, the Learned Trial Court has allowed the application and restrained defendants from surrendering possession of property as well as from executing any document in favour of original owner. Being aggrieved and dissatisfied with that order, defendants have filed present appeal.

15. We have heard both Learned Advocates, perused the evidence on record, plaint, written statement, application, reply, appeal memo. After going through rival contentions of parties and order passed by the Learned Trial Court, following points arise for our consideration and our findings thereon for the reasons stated below are:

Sr. No.	Points	Findings
1.	Whether the plaintiff is having prima-facie case?	In the Affirmative
2.	In whose favour balance of convenience lies?	In favour of Plaintiff

3.	To whom irreparable loss would be caused, if injunction is rejected	To plaintiff
4.	Whether the impugned order passed by the Learned Trial Court needs any interference?	In the Negative
5.	What Order?	Appeal is dismissed with costs

REASONS

AS TO POINT Nos.1 to 3:-

16. It is not disputed that, Dhondibai was the original tenant in respect of suit property. Suit property is in possession of defendants' father. Defendants' father had filed R.A.D. Suit No.2917 of 1987 and Appeal No.22 of 2004 against plaintiff's mother. Both suit and appeal were dismissed on merits.

17. It is submission of Learned Advocate for defendants that, plaintiff's mother had started preparing forged documents, showing her residence in suit premises. She never resided in suit premises. Plaintiff also never resided in suit premises. Plaintiff has no tenancy rights in suit premises. Suit premises is in possession of defendants since long. They have every right to handover/surrender its possession to original owner, if original owner wants to redevelop the property. It is further submission of Learned Advocate for defendants that, defendants have right to enter into an agreement in case of redevelopment. Thus, the order passed by the Learned Trial Court against defendants is against the settled principles of law.

18. It is further submission of Learned Advocate for

defendants that, plaintiff's suit is not within limitation. The defendants have prayed for framing preliminary issues about limitation in their written statement. The Learned Trial Court ignored that aspect and has decided injunction application, which is also against the settled provisions of law. Thus, the order passed by the Learned Trial Court needs to be set-aside. To support her submission, she relied upon. **Ramiah V/s. N. Narayana Reddy (Civil Appeal No.5864 1999 dated 08-10-2004).**

19. Though, Learned Advocate for defendants relied upon above ruling, the said ruling is in respect of possession under Article-64 & 65 of the Limitation Act on the basis of adverse possession. No doubt, as submitted by Learned Advocate for defendants, defendants have raised the issue of limitation in their written statement. But, facts in the present suit and the facts in the ruling relied by Learned Advocate for defendants are totally different. Therefore, ratio laid down in the said ruling is not helpful for defendants in the present case.

20. On the other hand, it is submission of Learned Advocate for plaintiff that, declaration suit filed by defendants' predecessor is dismissed by the Learned Trial Court and Appeal Court. Both competent Courts have held that, defendants have no tenancy rights in suit premises. The plaintiff's mother is tenant in suit premises. Competent Court has held that, defendants are gratuitous licensees. Issue of limitation can not be framed as preliminary issue, it is not pure question of law. That aspect needs to be decided on merits. The present suit has been filed by the plaintiff for eviction. Thus, if, during pendency of the suit, with intent to defeat the rights of the

plaintiff, defendants surrender their possession or enter into an agreement with original owner, injustice would be caused to the plaintiff. The Learned Trial Court has rightly held that, it is necessary to grant injunction in favour of the plaintiff during pendency of the suit. The order passed by the Learned Trial Court needs no interference. Hence, present appeal is not tenable.

21. Though, Learned Advocate for defendants submitted as above, as submitted by Learned Advocate for plaintiff, whether plaintiff is having tenancy rights in suit premises or not should have been decided on merits. The fact that, suit property is in possession of the defendants is not in dispute. As rightly submitted by Learned Advocate for plaintiff, defendants in their written statement have specifically pleaded that, they have right to surrender possession of suit premises as well as enter into an agreement in respect of suit premises in case of redevelopment with original owner. The plaintiff has filed present suit for eviction against defendants on the ground that, he is tenant in suit premises. Admittedly, R.A.D. suit filed by defendants' predecessor is dismissed on merits. His appeal is also dismissed on merits. In such situation, there is a possibility that, being aggrieved by the present suit, defendants may surrender possession of suit premises directly to original owner or may enter into an agreement in case of redevelopment or even without any case of redevelopment. If defendants do so, definitely, injustice and loss would be caused to the plaintiff.

22. Admittedly, defendants' predecessor has filed suit against plaintiff's mother. This fact prima-facie goes to show that, plaintiff's mother and plaintiff are having some interest in suit property. That

interest needs to be decided on merits. Till then, if defendants either surrender possession or enter into an agreement with original owner, definitely rights of plaintiff would going to affect. Thus, as rightly submitted by Learned Advocate for plaintiff, if injunction is not granted in favour of plaintiff, injustice and loss would be caused to him.

23. On the other hand, suit property is in possession of defendants, thus, if injunction is granted, no injustice or loss would be caused to defendants. As submitted by Learned Advocate for plaintiff, defendants failed to prove their tenancy rights in suit premises. The rent receipts produced by plaintiff on record show that, rent receipts are in the name of Dhondibai. The relation of plaintiff as well as defendants with original tenant Dhondibai should have been decided on merits in the present suit. Thus, till decision, if defendants surrender possession or enter into an agreement with original owner, definitely, injustice or loss would be caused to the plaintiff.

24. Moreover, the possibility of multiplicity of proceeding also can not be ruled out. Therefore, it is necessary to grant injunction against defendants as prayed by plaintiff. The documents on record show that, balance of convenience lies in favour of the plaintiff. Thus, if injunction is not granted, injustice and irreparable loss would cause to the plaintiff. Hence, we answer point No.1 to 3 accordingly.

AS TO POINT NO.4 :-

25. On going through the impugned order passed by the Learned Trial Court, it appears that, it has recorded proper finding against each point and arrived at correct conclusion. Hence, the order

passed do not require interference. We therefore, answer point No.4 in the negative.

AS TO POINT NO.5:-

26. In view of our above discussion and findings to point Nos.1 to 4, for the reasons stated above, Misc. Appeal deserves to be dismissed with costs. Therefore, we proceed to pass the following order:

: O R D E R :

The Misc. Appeal is hereby dismissed with costs.

I agree,

(A.Z. Khan)
Ad-hoc District Judge,
Court Room No. 4,
28.08.2019

(S.R. Patil)
Judge,
Court Room No. 4,
28.08.2019

Order dictated on : 28.08.2019
Order transcribed on : 29.08.2019
Order checked & signed on : 30.08.2019

(S.R. Patil)
Judge, C.R. No. 4