

MHCC040085142018



**BOMBAY CITY CIVIL COURT, BORIVALI DIVISION AT
DINDOSHI, GOREGAON, MUMBAI**

NOTICE OF MOTION NO.3308 OF 2018
(CNR NO.MHCC04-008514-2018)

IN

S.C. SUIT NO. 1419 OF 2018

Mr. Mandeep Ravikant Massey

...Plaintiff

Vs.

D.M. Lifespace & Ors.

...Defendants

CORAM: H.H.JUDGE SHRI M.H.SHAikh
(C.R.NO.2)

DATE : 14th March 2020

Adv. Bafana for plaintiff.

Adv. Dhananjay Shukla for defendant no.1 and 2

Adv. Bharat Bhatia for Defendant nos.3(A) and 3(B)

ORDER

1. This is the notice of motion taken out by the plaintiff, for the following prayers :

a) Pending the hearing and final disposal of the suit the Court be pleased to direct and/or order the Defendant nos.1, 2, 3A & 3B to deposit in this Court an aggregate sum of Rs.20,00,000/- paid/received by them as mentioned in two Deed of Surrender of Tenancy both dated 14/03/2018.

b) The amounts so deposited be invested in fixed deposits and/or Government Bonds till the hearing and final disposal of the present suit.

An affidavit of plaintiff is filed in support of the said notice of motion.

2. By way of an affidavit in support of the notice of motion, it is the case of the plaintiff that he is claiming his 1/4th share in the suit premises and for other reliefs. Defendant nos.1 and 2 have filed their compilation and their reply, from that plaintiff came to know about execution of alleged Deed of Surrender of Tenancy dated 14/03/2018 in respect of Room no.6 as well as Room no.8, which are suit premises. Against the Deed of Surrender of Tenancy, the deceased defendant no.3 his wife and his children have taken a monetary consideration of Rs.15,00,000/- and Rs.5,00,000/- respectively, thus total Rs.20,00,000/- from defendant nos.1 and 2. The defendant nos.1 and 2 alongwith defendant no.3, 3(A), and 3(B) in collusion with each other had made false documents to deprive the plaintiff of his legal rights. Even though the tenancy is surrendered as regard the suit premises which is illegal still the plaintiff is having 1/4th share. There is every likelihood that defendant nos.3(A) and 3(B) would completely spent all the money thereby creating hindrance for the recovery of decretal amount by this plaintiff and the other legal heirs of their respective shares. Therefore it is necessary to direct defendant nos.1, 2, 3(A) and 3(B) to deposit sum of Rs.20,00,000/- in the Court and the said amount is required to be invested. Therefore prayed to allow the notice of motion.

3. Defendant nos.1 and 2 filed their affidavit in reply to the said notice of motion and strongly objected to the contents of the notice of motion. It is their case that no order can be passed under Order XIIIIX Rule 1 and 2 of CPC as prayers can be quantified in terms of money. The said notice of motion is not maintainable because the prayer for depositing Rs.20,00,000/- is not prayed in the suit. Unless and until the plaintiff amend and incorporate the prayer in the suit the prayers in the notice of motion cannot be granted. Granting of prayers in the notice of motion will amount to enlarging the scope of the suit, which is not permissible. Defendant no.3 became the tenant of the

suit premises u/s.5(11)(C) of Bombay Rent Act as he was residing alongwith the tenant in the suit premises i.e. Room no.6. The money is already paid by defendant nos.1 and 2 to defendant no.3, 3(A) and 3(B) and therefore no order can be passed as against defendant nos.1 and 2. On these and other grounds, it is prayed that notice of motion be rejected.

4. Defendant nos.3(A) and 3(B) filed their affidavit in reply to the said notice of motion and denied the contents of an affidavit in support of the notice of motion. It is their case that this Court does not have jurisdiction to try the suit. The suit is not maintainable in this Court. Plaintiff was not residing in the suit premises for more than 30 years. Defendant nos.3, 3(A) and 3(B) were the statutory tenants and the rights are transferred to them as transmitted tenancy after death of the father and mother of deceased defendant no.3. Therefore prayed to reject the notice of motion.

5. Plaintiff filed a rejoinder to the reply filed by defendant nos.1 and 2 and defendant nos.3(A) and 3(B) and denied the contents of the reply filed by them and reiterated the contents of an affidavit in support of the notice of motion and prayed to allow the notice of motion.

6. Heard learned advocate for the plaintiff, learned advocate for defendant nos.1 and 2 and learned advocate for defendant nos.3(A) and 3(B). Gone through the relevant provisions of law i.e. Order XIIIIX Rule 10 of CPC, Section 4, Section 7(15), Section 25 and 35 of Maharashtra Rent Control Act. So also the authorities relied by learned advocate for plaintiff vide Exh.17. So also gone through the authorities relied by learned advocate for defendant nos.3(A) and 3(B).

7. Learned advocate for plaintiff relied upon following authorities :-

a) **Sanjay Govind Ganjekar & Ors., vs. Krishna Kashiram Mistri & Ors,**

in Appeal From Order NO.1221/2012 with Civil Application no.1660/2012 dated 07/08/2013.

b) Mrs. Mina Srinivasan Krishnan & Anr. vs. Arun Bhaskar Adarkar, in Appeal No.312/2012 in Suit No.1173/2011 dated 16/06/2014.

8. Learned advocate for Defendant nos.3(A) and 3(B) relied upon following authorities :-

a) Vasant Pratap Pandip and another vs. Dr. Anant Trimbak Sabnis and others, reported in 1995(2) Bom.C.R.388.

b) Cawas Dhunjishaw Saher vs. Dr. Keikobad C. Batliwala, reported in 1995(2) Bom.C.R.175.

c) Jagdish Chander Sachdeva vs. Royal Bombay Yatch Club & Ors., reported in 2005(1) ALL MR 666.

d) Ashok Chintaman Juker & Ors. vs. Kishore Pandurang Mantri & Anr. Dated 09/05/2001.

9. Upon hearing and going through the material placed on record, following points arise for the determination of this Court and this Court has recorded its findings against each of them for the reasons mentioned hereinafter :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the plaintiff has made out prima facie case in his favour ?	In the negative.
2. Whether balance of convenience tilts in favour of the plaintiff ?	In the negative.
3. Whether irreparable loss will cause to the plaintiff ?	In the negative.
4. What order ?	As per final order.

REASONS**As to point no.1 to 3 :**

10. Plaintiff has come with a case that he is having 1/4th share in the suit premises i.e. Room no.6 and Room no.8 more particularly described in the plaint and he has prayed for declaration that he is the legal heir and is having 1/4th share in the suit premises. He also prayed for permanent injunction, appointment of Court Receiver and temporary injunction. It seems that a status quo order was passed by this Court but thereafter MCGM issued notice and thereafter demolished the suit premises, so also building wherein the suit premises was situated. It is not disputed that defendant nos.1 and 2 had paid an amount of R.20,00,000/- for the suit premises i.e. Room no.6 and Room no.8 to defendant no.3, defendant no.33(A) and 3(B). During the pendency of suit, defendant no.3 died who was the brother of the plaintiff. Defendant no.4 is also brother of plaintiff and defendant no.5 is sister of plaintiff. It is a fact that room no.8 was in the name of defendant no.3 as tenant and room no.6 was in the name of father of plaintiff as a tenant. Plaintiff has come with a case that defendant no.3 was not having job or source of income and his father had taken room no.8 on tenancy basis from his income in the name of defendant no.3, but in the pleadings it is categorically stated that the defendant no.3 is the tenant of room no.8. As far as room no.6 is concerned, father of the plaintiff was the tenant and it is the case of the plaintiff that his name is in the ration card and therefore he is also having right in the tenancy. Further it is his pleadings that he is residing at some other place as per the wish of his mother. The mother of the plaintiff died in the year 1997 and it is pleaded by the plaintiff that somewhere in the year 1990, he had purchased premises mentioned in the title clause of the plaint from his own funds. Therefore what can be gathered is that prior to the year 1997, plaintiff shifted to the address mentioned in the title clause of the plaint and was not residing in room no.6 nor in room no.8. However learned advocate for the plaintiff harped upon the

ration card saying that till the year 2016, his name appeared in the ration card. All these facts will be dealt with by the Trial Court at the time of trial as to whether the plaintiff has any right being the legal heirs in the tenancy and whether the Deeds of Surrender are legal or illegal, whether this Court has jurisdiction or not. Whether tenancy is transmitted to defendant no.3, defendant no.3(A) and 3(B) or not will be considered by the Trial Court. This Court finds that it will not be proper to make any observations in this regard at this preliminary stage of the suit. Learned advocate for plaintiff as well, defendant no.3(A) and 3(B) have relied upon authorities which are referred above. They speak about the fact that suit can be filed in Civil Court for declaration of heirship of tenant. The authorities relied by the learned advocate for defendant nos.3(A) and 3(B) speak about Section 5(11)(c) of Bombay Rent Control Act. As per this authority the family members who are residing with the tenant at the time of his death become tenants of the suit premises. As per pleadings of the plaintiff, when the father of the plaintiff died at that time he was residing somewhere else. Therefore prima facie it seems that plaintiff was not residing in the suit premises as stated above.

11. Now the core question before this Court is as to whether direction can be given to the defendant nos.1, 2, 3(A) and 3(B) to deposit Rs.20,00,000/- of the surrender tenancy amount in the Court. As far as this aspect is concerned, the defendant nos.1 and 2 have come with a case that they have already paid an entire amount to defendant no.3, 3(A) and 3(B) and therefore there is no question of them to be again directed to deposit sum of Rs.20,00,000/-. This argument of learned advocate for defendant nos.1 and 2 seems to be a proper argument. Therefore defendant nos.1 and 2 cannot be directed to deposit an amount of Rs.20,00,000/- in the Court.

12. As far as defendant nos.3(A) and 3(B) are concerned, this Court

finds that after getting knowledge to the plaintiff about executing of Deeds of Surrender of Tenancy and receiving an amount of Rs.20,00,000/-, plaintiff did not amend the plaint nor prayers in the plaint. Therefore at this juncture, there is no prayer for Rs.20,00,000/- which defendant nos.3, 3(A) and 3(B) received. Plaintiff is having 1/4th share i.e. Rs.5,00,000/- and such pleadings is not made nor there is a prayer, nor the Court fee stamp is paid thereon. Therefore even if the Court directs to deposit an amount of Rs.20,00,000/- in the Court still as there is no final relief prayed in the plaint, whether passing such an order will be helpful. This Court finds that such an order cannot be passed when there is no pleadings and prayers in the plaint to that effect. This Court fails to understand as to why the plaintiff did not amend the plaint and the prayers in the plaint.

13. Now the question is as to Order XXXIX Rule 10 of CPC, I have gone through the said provision. It is true that Court has power to direct party to deposit an amount in the Court but the said provision says that the subject matter of the suit should be money. In our case in hand, subject matter of the suit is of immovable property i.e. suit premises which is comprising of room no.6 and room no.8, which are already demolished by BMC. Therefore when an amount of Rs.20,00,000/- is not subject matter of the suit, then the question crops up as to how come such an order can be passed in favour of the plaintiff. Moreover except bare words in an affidavit in support of the notice of motion that defendant nos.3(A) and 3(B) will utilize the said amount and then decree which will be passed by this Court cannot be executed. This Court finds that when there is no pleadings about cash amount, there is no question of passing such a money decree. Therefore this Court is of a considered view that plaintiff has failed to prove his case in this notice of motion. In the result, this Court answers all the aforesaid points in negative.

Point no.4 :-

14. In view of the aforesaid findings, this Court hold's that notice of motion is required to be turned down. Hence the order.

ORDER

1. Notice of motion no. **3308 of 2018** stands rejected and disposed of accordingly.
2. Cost shall be costs in cause.

(M.H.Shaikh)
Judge, City Civil Court,
Borivali Div. Dindoshi, Mumbai.

Dictated on : 14/03/2020
Transcribed on : 14/03/2020
Signed on : 16/03/2020

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 16/03/2020

Time :3.15 P.M.

UPLOAD DATE AND TIME

Mrs. Manisha S. Putta

(H.G.Stenographer)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Shri M.H.Shaikh (C.R.No.2)
Date of Pronouncement of JUDGMENT/ORDER	14/03/2020
JUDGMENT/ORDER signed by P.O. on	16/03/2020
JUDGEMENT/ORDER uploaded on	16/03/2020