

Order below Exh.6 in H.R.P. Suit No.440/2016**Appearance:-**

Mr. J. K. Shaikh, Learned advocate for the plaintiff.

Mr. G. J. Chuvalia, Learned advocate for the defendant no.2.

Coram: Mr. Daxesh Rajeshkumar Jaguwala, Judge.

O R D E R

1) The plaintiff has filed the present application to get temporary injunction against the defendants.

2) The brief facts of the plaintiff's case are as under:-

The plaintiffs are the trustees of the Chhipa Kabrastan Committee and the defendant no.1 was the tenant of the suit premises narrated in para-2 of the plaint and the kutchra hut was let out to the defendant no.1 at the monthly rent of Rs.20/- and the defendant no.1 had without any written consent and / or permission from the plaintiff trust, transferred the suit premises to the defendant no.2. The defendant no.2 had in collusion with the defendant no.1 removed entire original structures of the suit property and put up new permanent construction works by encroaching trust open land admeasuring about more than 20 sq. mtrs. and thereby changed the identity of the suit premises and thereby committing breach of the provisions of the Rent Act and / or by violating rules and regulations of B.P.M.C Act as well as of the provisions of Transfer of Property Act. Therefore, the notice has

been issued to the defendant no.2 and as the defendant no.2 is sub-tenant and hence, the defendant no.2 is not entitled to continue with the possession of the suit premises. The defendant no.1 has not paid rent from 01.01.2005 and becomes the tenant in arrears for more than six months and the defendant has also not paid the municipal tax bill of the suit premises. Therefore, the defendants are further required to be restrained not to take law in their hands and to put up further any kind of permanent construction works that to which was put up without any permission either from the plaintiffs trust or A.M.C. and they also required to be restrained from illegally alienating, transferring, parting with, assigning with and / or subletting the suit premises to anyone interested persons. Therefore, the plaintiffs have filed this suit as well as present application and prayed relief as per para-4 of this application against the defendant.

3) The defendants have been duly served summons / notice of the suit as well as this application. Though served, the defendant no.1 has not appeared before this Court and therefore, the present case is ordered to be proceeded ex parte against the defendant no.1. The defendant no.2 has appeared before the Court and filed written statement vide Exh.40 and denied almost all the facts of the plaintiff's case and contended that the plaintiff has suppressed the material facts and mislead and misguided the Hon'ble Court and this suit is barred by law of limitation, resjudicata, estoppel, delay

laches and non-joinder and mis-joinder of parties. The main grievance of the defendant no.2 is narrated in sale-deed dated 01.01.2004 which may be read along with this in reply and it may be treated as part and parcel of this reply and hence, same are not repeated herein for the sake of brevity. The plaintiff trust had given open land of 29 sq. mtr. of Chhipa Kabrastan on rent on or before 75 years ago to Pandit Gayaprasad Laxmanram at the monthly rent of Rs.26/- and ordi / house was built by Pandit Gayaprasad and said grievance of defendant no.2 is narrated in the sale-deed dated 01.01.2004 and the plaintiff had accepted the defendant no.2 as tenant of the suit premises and invited in their farewell party on dated 17.07.2005 in Chhipa Community Center Astodia. The defendant no.2 was ready to pay rent to the plaintiff but the plaintiffs were not accepting the rent from the defendant no.2 and the defendant no.2 is ready to deposit the due rent in the Hon'ble Court. The plaintiff trust has also not given any legal notice to the defendant no.2. Rest of the say of the defendant no.2 however is in denial. Therefore, the defendant no.2 has prayed to reject the suit as well as present application.

4) Heard learned advocate for both the parties and perused the record of the case. Considering the pleadings, record and arguments advanced by learned advocate for both the parties, the plaintiff has filed present suit contending that the defendant no.1 is a tenant of the suit premises and he has sublet, transferred the suit premises to the

defendant no.2. Now, looking to the document produced vide Mark-4/2, it appears that the defendant no.1 is a tenant of the suit premises. On the other hand, as per the contentions of written statement, the defendant no.2 is a tenant of the suit premises and it appears that he is in possession of the suit premises. The defendant no.2 has produced copy of rent receipt, which is issued in name of the defendant no.1 by the plaintiff trust vide Mark-41/1, copy of sale deed of Pandit Gayaprasad to Navnit K. Solanki vide Mark-41/2. The defendant no.2 has further produced copy of tax bill of the suit premises vide Mark-41/3 and 43/4, wherein the name of defendant no.2 is running as occupier of the suit premises. Thus, as per the material on record, the plaintiff is a landlord and the defendant no.1 is a tenant and the defendant no.2 is in exclusive possession of the suit premises. Now, the plaintiff has apprehension that the defendants will transfer or assign suit property to third party and if the prayer asked by the plaintiff will not be granted then the defendants will not suffer any hardship rather than plaintiff as the plaintiff is a landlord of suit premises. The plaintiff has further prayed to restrain the defendants from making any type of construction in the suit premises. The defendants have no right to sublet or transfer or assign suit premises to third party or to make any type of construction in the suit premises. Therefore, if the interim injunction is granted, it will not prejudice to the defendants.

Thus, at this juncture, the plaintiff has prima-facie case and balance of convenience is also in favour of the plaintiff rather than the defendants and if defendants are not prevented from transferring suit premises to third party then the irreparable loss may cause to plaintiff which is not compensated in terms of money. Therefore, looking to the rival contentions between the parties, in my view, I pass following order:-

O R D E R

- (1) The present application of the plaintiff is hereby allowed.
- (2) The relief prayed in para-4(a) of this application is hereby granted till final disposal of the suit.
- (3) Costs shall be cause in a suit.

Signed and pronounced in the open Court today on this 25th day of January, 2019.

Ahmedabad.
Date: 25/01/2019.

(Daxesh Rajeshkumar Jaguwala)
Chamber Judge, UIC No.GJ00973,
Small Causes Court,
Ahmedabad.