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IN THE COURT OF SMALL CAUSES AT MUMBAI  
(Bandra Branch)

ORDER BELOW EXHIBIT NO. 9

in

L.E. Suit No.137 of 2022

[ CNR No.:- MHSCA3-001234-2022 ]

Mr. Hukumaraj Raghuraj Singh

... Plaintiff

***Versus***

Mr. Kaliprasad Raghuraj Singh

... Defendant

Mr. Manoj Shukla, Ld. Advocate for the plaintiff.

Mr. Ravi K. Dubey, Ld. Advocate for the defendant.

Coram : Smt. J. D. Hushangabade  
Judge, C.R. No. 40,

Date : 04<sup>th</sup> November, 2024.

**:: ORDER ::**

This is an application under Order XXXIX Rule 1 and 2 r/w Section 151 of the Code of Civil Procedure, 1908 for temporarily restrained to the defendants, their servants, agents or any person/s claiming through or under them or transferring alienating, parting with possession and/or creating any further third party rights in respect of Room No.321, Upper floor, situated at Singh Chaubey Chawl, Appapada Kurar Village, Malad (E), Near Dudhwadi, Mumbai – 400 097 (hereinafter referred to as ‘suit premises’).

**Case of plaintiff :-**

2. It is the case of plaintiff that, he is the owner of the suit premises. He has constructed ground floor in the year 1991 and upper portion was constructed in the year 2001. The room premises is

constructed with brick masonry wall and patra shed. He is absolute owner and has full right, title and interest on the said room no.321. It is further stated that defendant happened to be his real brother and was not having any place to stay in the city of Mumbai therefore in the year 2009, defendant approached plaintiff and requested to allow him to stay at the upper floor of the room premises no.321, temporarily without paying any charges. Defendant also stated and explained his financial condition that he cannot manage any premises on rent and/or leave & license and requested plaintiff to allow him to stay at the upper floor of the premises.

3. It is further case of plaintiff that gradually his family grew up and accordingly he asked the defendant number of times to vacate the suit premises but on the one pretext or other defendant avoided to vacate and hand over the premises. The defendant always gave false excuses and also narrated his problems that so far he could not arrange any premises in the vicinity and therefore requested for some more time and assured to the plaintiff that by June 2022 defendant shall vacate the suit premises. Though the defendant has purchased room at Nalasopara, district Palghar but due to greed and malafide intention he is not vacating the suit premises i.e. upper floor of Room No.321. The defendant is not ready to vacate the suit premises, therefore, the present suit is being filed for the reliefs as more particularly mentioned in the plaint. Plaintiff has made out prima facie case against the defendant, the balance of convenience is also in his favour, therefore, the relief as prayed for be granted. If relief as prayed for is not granted irreparable loss and harm shall be caused to plaintiff and on contrary no harm, prejudice and hardship will be caused to the defendant if the relief is granted.

**Case of defendant :-**

4. It is case of defendant that the suit premises belong to Hindu Undivided Family consist of four brother including plaintiff. The plaintiff is Karta head of the Hindu Undivided Family. The plaintiff has hid his status of Karta and has file the suit on bogus, fabricated facts to mislead the Hon'ble court to grab desire order and decree from the Hon'ble Court. The defendant further submitted that the upper portion of the suit premises comes in the share of defendant as a member of Hindu united family. Hence, prayed to protect the possession of the defendant during the pendency of the suit.

5. The plaintiff filed rejoinder vide Exh.15 and therein denied the whole contention raised by the defendant in toto.

6. Perused application, reply and rejoinder. Heard both sides at length.

7. From the rival pleading, following points arise for my determination and I have recorded my findings thereon for the reasons below:-

| <b><u>Sr.<br/>No.</u></b> | <b><u>POINTS</u></b>                                                                   | <b><u>FINDINGS</u></b> |
|---------------------------|----------------------------------------------------------------------------------------|------------------------|
| 1.                        | Does plaintiff made out a prima facie case in his favour?                              | In the affirmative.    |
| 2.                        | Whether the balance of convenience lies in favour of plaintiff?                        | In the affirmative.    |
| 3.                        | Whether plaintiff will face irreparable loss in the event of rejection of application? | In the affirmative.    |
| 4.                        | What order?                                                                            | As per final order.    |

**:: REASONS ::**

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

8. All these points are interlinked with each other, therefore, taken for consideration at once for convenient discussion and to avoid repetition.

9. Ld. Advocate for the plaintiff has submitted that defendant is real brother of plaintiff. The defendant didn't have any place in city of Mumbai to reside in the year 2009. Therefore, defendant approached the plaintiff and requested to allow him to stay at the upper floor of the room premises No.321. Therefore, the plaintiff allowed him to stay at the upper floor of the premises as gratuitous licensee. Thereafter, family of the plaintiff gradually grew up therefore the plaintiff asked the defendant number of times to vacate the suit premises. But the defendant is not ready to vacate the suit premises, therefore, plaintiff has filed this suit for eviction.

10. On the other hand Ld. Advocate for defendant has contended that the suit premises belongs to Hindu Undivided family consist of four brothers including plaintiff. The plaintiff is Karta of their Hindu Undivided Family. The upper portion of the suit premises comes in the share of defendant as a member of Hindu Undivided Family. Ld. Advocate for the defendant has further contended that all brothers decided to purchase the room or land in the name of elder brother i.e. plaintiff. Accordingly, three open lands has been purchased in Mumbai in the name of plaintiff. The suit premises is one of premises out of premises purchased in the name of plaintiff. The suit premises constructed out of contribution of defendant along with other three brothers including plaintiff.

11. Considering rival submission of the both parties it appears that the suit premises is in the name of plaintiff is not disputed. The defendant has contention that he is not gratuitous licensee. He possessed the suit premises as member of Hindu Undivided family. The suit premises has been purchased in the name of plaintiff being Karta of Hindu Undivided Family from contribution of all four brothers. The suit premises has been purchased and constructed out of contribution of defendant and other three brothers including plaintiff. I am of the opinion that the defendant has to prove above said facts by adducing relevant evidence. Prima facie it appears that the suit premises is in the name of plaintiff, therefore, it can not be presumed at this stage that the defendant is occupying suit premises as member of Hindu Undivided Family and not as a gratuitous licensee.

12. The plaintiff has apprehension that defendant can transfer, alienate, parting with possession and/or create third party interest in respect of suit premises. The plaintiff has not filed any documentary evidence to support his apprehension. However, considering defence of the defendant that he has possession of the suit premises as member of Hindu Undivided Family and as a gratuitous licensee and considering the fact that the suit premises is in the ownership of defendant, I am of the view that the apprehension of the plaintiff, that defendant can transfer, alienate, parting with possession and/or create third party interest in respect of suit premises, can not be ruled out.

13. The plaintiff has filed this suit for eviction. Considering nature of the suit, if the defendant inducted the suit premises to third person, it cause hardship to the plaintiff, delay in the proceeding of this suit and multiplicity of proceeding. On the other hand the defendant has possession of suit premises, therefore, if he is restrained from

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creating third party interest in the suit premises, no hardship will be caused to him. Considering above facts and reasons stated above, I came to the conclusion that the balance of convenience lies in favour of plaintiff. Hence, I answer point nos.1 to 3 in affirmative. The application is entitled to allow. Hence, in answer to point no.4 I proceed to pass following order :-

**:: O R D E R ::**

- 1) Application at **Exh.9** is allowed.
- 2) The defendants, their servants, agents or any person/s claiming through or under them are hereby restrained by an order of temporary injunction from transferring alienating, parting with possession and/or creating any further third party rights in respect of suit premises i.e. Room No.321, Upper floor, situated at Singh Chaubey Chawl, Appapada Kurar Village, Malad (E), Near Dudhwadi, Mumbai – 400 097 till hearing and final disposal of the suit.
- 3) Both parties to take note of this order.
- 4) Costs in cause.

Date : 04/11/2024

( J. D. Hushangabade )  
Judge, C.R. No. 40

Order dictated & Typed on : 04/11/2024  
Order checked & signed on : 07/11/2024