

CNR No. MHCC01-009245-2017

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY

NOTICE OF MOTION NO. 3204 OF 2017

IN

SUIT NO. 2043 OF 2017

Santosh Bhiku Talar

...Plaintiff.

V/s.

Shripat Ganapat Bait & Ors.

...Defendants.

Appearances:

Learned Adv. Mr. Suresh Dubey for plaintiff.

Learned Adv. Ms. Khatu I/b M/s. Dahibawkar & Co. for defendant
Nos.1 to 4.

**CORAM : HIS HONOUR JUDGE
SHRI M.M. SYED.
(C.R.No.04)**

DATED : 12th July, 2019.

-: ORAL ORDER :-

1. The plaintiff has taken out this Notice of Motion and requested to grant temporary injunction restraining the defendant Nos.1 to 4 from dispossessing him or disturbing his peaceful possession of room being DX 302, Nepeansea Road, Simala Nagar Zopadpatti, Malabar Hill, Mumbai-6, and also restraining the defendants from entering into the suit premises, and also directed to defendant Nos.1 to 4 to pay an amount of Rs.8000/- per month and creating third party interest over the suit premises.

2. The plaintiff has filed the suit for grant of injunction, wherein he contended that his father namely Shri Bhiki Ganapat Talar has purchased the suit premises i.e. DX 302, Nepeansea Road, Simala Nagar Zopadpatti, Malabar Hill, Mumbai-6 (hereinafter referred to as "suit

premises”) from one Mr. Gangaram Soni on 01.06.1975 and the said vendor executed an writing to that effect.

3. The father of the plaintiff died on 08.04.2017 leaving behind him the plaintiff only his heir and legal representative. Since the date of purchase of the premises, father of the plaintiff started to reside in the suit premises. The survey was made by the authority and accordingly, issued certificate in the name of deceased father of plaintiff.

4. In the year 1978, the father of the plaintiff also paid taxes to the Maharashtra Government in respect of the suit premises. In the year 1990, the survey was made by the Corporation and accordingly, survey receipt was issued in favour of father of the plaintiff. The father of the plaintiff also fill up the survey form in the year 1990.

5. The defendant No.5 society also issued identity card in the name of father of the plaintiff in respect of suit premises and father of the plaintiff also paid several payments to the society. The Government of Maharashtra also issued Senior Citizen card in the name of father of the plaintiff. Government of India also issued Aadhar card in the name of father of the plaintiff and likewise PAN card. Election Commission also issued the Election card.

6. After purchase the suit premises, father of the plaintiff applied for electricity connection and BEST has issued the electric meter in the name of deceased father of the plaintiff. His father had applied for Ration card. It was also issued in the name of plaintiff's father.

7. In the year 1980, the defendant No.1 has come to Mumbai and approached the father of the plaintiff, as defendant No.1 is neighbour of the plaintiff at his native place and requested to deceased father of the plaintiff to allow him in the suit premises, as he has no any premises to reside in Bombay. Therefore, plaintiff's father has given the upper floor/loft premises for his residence purpose with understanding between the father of the plaintiff and defendant No.1 that as and when the father of the plaintiff required the said upper floor premises, the defendant No.1 shall be vacated the said premises, without making any claim. Thereafter, the defendant No.1 started to reside in the upper floor premises.

8. In the year 1998, the defendant No.2 had come to Mumbai and also started reside in the suit premises alongwith the father of the plaintiff. Defendant No.3 has also come at Mumbai in the year 2008 and defendant No.4 has come in the year 2012 and they started residing in the suit premises. The father of the plaintiff was residing in lower/ground floor portion alone therefore, he has not objected for the same.

9. In the year 2016, the father of the plaintiff required the suit premises for his son i.e. plaintiff's use and occupation as he intends to perform the plaintiff marriage and also plaintiff has started his job at Mumbai. Therefore, he required the suit premises i.e. upper floor portion of the premises for the purpose of plaintiff's use. The premises is near about 91 Sq. Ft. There is a difficulty to reside the plaintiff and his father in lower portion of the premises.

10. Despite his several requests, defendant Nos.1 to 4 not vacated the suit premises and also not given any response and started making excuse on one grounds to another for vacating the suit premises. The defendant Nos.1 to 4 had stated that call meeting of Samaj and if Samaj say than the defendant Nos.1 to 4 will vacate the premises. Therefore, the father of the plaintiff called meeting of Samaj and in the said meeting, the father of the plaintiff and the defendant Nos.1 to 4 had also present. The defendant Nos.1 to 4 made statement before Samaj that they will vacate the suit premises on or before May 2017. The said conversation has been recorded.

11. However, the father of the plaintiff died in the month of April 2017. After the May 2017, the plaintiff asked the defendants to vacate the suit premises as he intends to marry, but have refused to vacate the suit premises though, they agree to vacate it in the month of May 2017. The defendant Nos.1 to 4 are residing illegally and they have no right, title and interest at all.

12. Due to good relation, the name of defendant No.1 is recorded in the Ration card as he required Kerosene Oil for the purpose of preparation of food and now, he is misusing the same. The plaintiff is neither the tenant nor licensee nor occupier of the suit premises, but has been occupation of the suit premises as owner thereof since 1975 till date. The defendants are illegally residing in the suit premises.

13. The defendant Nos.1 to 4 have without seeking any permission or NOC from the plaintiff, had also secured gas connection of HP in July 2017. When he came to know about it, he sought the information under RTI. The father of the plaintiff was paying the outgoings in respect of

suit premises and after the death of father of the plaintiff, plaintiff is paying the same. The defendants made the life of plaintiff miserable and taking quarrel with the plaintiff. They are harassing the plaintiff. They have given the threats to thrown out plaintiff from the suit premises.

14. On 10.08.2017, the defendant No.1 made quarrel with the plaintiff and given threat to him for filing false complaint against him. Therefore, it will be better to remove the defendants from the suit premises.

15. On 12.08.2017, the plaintiff again requested to defendant Nos.1 to 4 to vacate the suit premises. The defendant Nos.1 to 4 also tried to create a third party interest and it was informed by one Estate Agent Mr. Kuldeep on 13.08.2017. Therefore, there is a possibility of creating third party interest. Therefore, the plaintiff has filed the present suit wherein, he filed the Notice of Motion for grant of temporary injunction as mentioned above.

16. The defendant Nos.1 to 4 have resisted the Notice of Motion by filing reply. According to the defendants, the suit of the plaintiff is nothing but abuse of process of law and liable to be dismissed. This Court has no jurisdiction to entertain and dispose off the present suit. The suit is under valued and plaintiff did not pay proper Court fee.

17. According to the defendants, the suit premises existing in the area which has been declared as slum area under the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "Slum Act 1971"). Therefore, the

suit is hit by section 22 of Slum Act 1971.

18. The plaintiff has suppressed true and material facts and has not approached this Court with clean hands and therefore, the suit is liable to be dismissed. They contended that the father of the plaintiff was closely related with the defendant No.1 as the father of the plaintiff was maternal cousin of the defendant No.1. The father of the plaintiff and defendant No.1 are belongs to same native place village Mahu, Taluka-Mandangad, District-Ratnagiri.

19. The defendant Nos.1 to 4 contended that defendant No.1 came to Mumbai on support of his uncle one Mr. Laxman Gaopal Bait, who had no children and therefore, he had tremendous love and affection towards the defendant No.1. He always supported defendant No.1 after arrival at Mumbai. Said Mr. Laxman looked after the defendant No.1 and supported him during those days. Defendant No.1 was helping Mr. Laxman in his job of domestic work and gradually defendant No.1 also with the help of said Mr. Laxman, acquired some job of domestic work in Malbar Hil, South Mumbai area.

20. Thus, defendant No.1 had come to Mumbai out of his hard work and efforts and savings gathered some money and out of his said savings, he acquired the suit premises jointly with the father of the plaintiff. The said Mr. Laxman also financially supported the defendant No.1 in acquiring the suit premises.

21. The defendant No.1 is the co-owner of the suit premises and as such, he entitled to undivided right, title and interest in the suit premises as a co-owner. Since the acquisition of the suit premises, the

defendant No.1 in use, possession and occupation of the suit premises.

22. The suit premises was earlier constructed of thin sheets with manglore roof tiles and subsequently in the year 1988, the suit premises was renovated and repaired with equal contribution of the defendant No.1 and the father of the plaintiff. Accordingly, one additional room was constructed above the suit premises.

23. After the said renovation, the defendant No.1 apart from occupying on the ground floor of the suit premises commenced to occupy first floor of the suit premises, which was constructed under the said renovation to the suit premises in the year 1988. The defendant No.1 was jointly occupying the ground floor of the suit premises with the father of the plaintiff. However, the upper floor/room of the suit premises was always in exclusive use, possession and occupation of the defendant No.1.

24. The father of the plaintiff was elder age amongst him and the defendant No.1 and therefore, the electricity connection and cooking gas connection in the suit premises was obtained in the name of father of the plaintiff for the sake of convenience. The Ration card was also obtained in the name of father of the plaintiff and initially, three persons i.e. father of the plaintiff, defendant No.1 and the brother of the defendant No.1 Mr. Kamlakar Ganpat Bait were residing in the suit premises. Therefore, these names are mentioned in the Ration card.

25. The Election Commission of India has issued election card in the name of defendant No.1 at the address of the suit property. The Unique Identification Authority of India has issued Adhar Card bearing No.5909

0279 1331 at the same address. The defendant No.1 has also opened the bank accounts showing the address of the suit premises.

26. The defendant No.2 has also obtained Adhar card in his name at the address of suit premises. The Driving Licence of defendant No.2 was also issued on the address of suit premises.

27. Thus, defendants are occupying and possessing the suit premises as they have right, title and and plaintiff has no locus-standy to file the present suit. They contended that they are residing in not only ground floor, but upper floor is in exclusive possession of the defendants. They denied the rest contentions of the plaintiff and prayed to dismiss the Notice of Motion.

28. The plaintiff has filed rejoinder to the reply filed by the defendant Nos.1 to 4 and prayed to allow the Notice of Motion.

29. Following points arise for my determination on which I record my findings as under for the reasons to follow :-

	POINTS	FINDINGS
1.	Whether the plaintiff has made out prima facie case in his favour ?	In Negative
2.	Whether the plaintiff has balance of convenience in his favour ?	In Negative
3.	Whether the plaintiff would suffer irreparable loss, if temporary injunction is not granted ?	In Negative
4.	What order?	As per final order

:- REASONS :-**AS TO POINT NOS.1 TO 4 :**

30. At the very outset, I would like to mention here that there is no dispute that father of the plaintiff and the defendant No.1 initially residing jointly. It also indicates from the documents on record that the father of the plaintiff had obtained the various documents showing the address of the suit premises. Likewise, the defendants also obtained certain documents and tried to show that they are taken these documents by showing the address of the suit premises.

31. Much or less, the plaintiff himself had admitted that the defendants are residing with him at upper floor of the suit premises and his father was residing in ground floor of the suit premises. The defendants specifically pleaded that the upper floor/loft premises was constructed in the year 1988, when the entire renovation was made by the father of the plaintiff and defendant No.1.

32. Therefore, the question of title or entitlement of the respective parties, can be decided only after leading the evidence by both the parties. On the basis of affidavit and xerox copies of the documents, the Court cannot make any conclusion that the particular party alone is the owner of the suit premises.

33. So far as the possession is concerned, even it is assuming that the defendants are the gratuitous licensee and therefore, it can be said that the defendants are residing in the suit premises with the permission of the father of the plaintiff. Therefore, when a party is in settled possession of the suit premises, like defendants, they cannot be evicted by issuing temporary injunction order.

34. I would like to mention here that the documents produced on record as well as the photographs produced by both the parties to the proceedings, it indicates that the defendants are climbing to reach the upper floor by a ladder and the entrance is from the inside of the suit premises. I reiterated here that the plaintiff has admitted that the defendants are residing in upper floor of the suit premises in the loft. In such circumstances, the photographs certainly supporting to the contentions of the defendants.

35. No positive evidence is brought on record to show that the defendants are going to create third party interest, merely saying that on 13.08.2017, the defendants tried to create third party interest and one Mr. Kuldeep, Estate Agent informed plaintiff, has no supported any evidence.

36. Considering the entire aspects of the matter, it cannot be said that the plaintiff has established the prima facie case and it is in his favour and balance of convenience lies in his favour. Therefore, I have recorded my answer to point Nos.1 & 2, as in negative.

37. If the injunction is not granted, no irreparable loss would be caused to the plaintiff. If the injunction is granted, the irreparable loss would be caused to the defendants. Therefore, I have recorded my answer to point No.3 is in the negative. Therefore, the plaintiff is not entitled to get any prohibitory order in his favour.

38. However, considering the controversy between the parties and rival claim over the suit premises, it will be just and proper to direct the parties to maintain the status-quo in respect of suit premises, till the

disposal of the present suit. This order will be certainly in the interest of both the parties and to protect the suit premises. Therefore, I pass the following order.

-: O R D E R :-

1. The Notice of Motion No.3204 of 2017 for grant of temporary, prohibitory/mandatory injunction is hereby dismissed.
2. However, both the parties are directed to maintain the status-quo in respect of the suit premises, till the disposal of the suit.

(M.M. SYED)

Judge, (C.R.No.4)

City Civil Court, Gr. Mumbai

Date : 12.07.2019.

Dictated on : 12.07.2019.

Transcribed on : 12.07.2019.

Signed on : 16.07.2019.

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

17.07.2019, at 12.48 p.m.
UPLOAD DATE AND TIME

Tushar P. Kuwar
[NAME OF STENOGRAPER]

Name of the Judge (With Court room no.)	HHJ Shri M.M. SYED Court Room No.4
Date of Pronouncement of Judgment/order	12.07.2019.
Judgment/order signed by P.O. on	16.07.2019.
Judgment/order uploaded on	17.07.2019.