

IN THE COURT OF SMALL CAUSES AT BOMBAY

**ORDER BELOW EXH.9
IN
R.A.D. SUIT NO. 1999 OF 2014**

1. Mrs. Savita Chaganlal Vaja and anr. . . Plaintiffs.

Versus

1. Mrs. Kastur Mohanlal Vaja and ors. . . Defendants.

Advocate for Plaintiffs : Mr. S.G. Mittal

Advocate for Defendant No.4 : Mr. N.A. Ghatte & M.Abdullah Mansuri

Advocate for Defendant No.19 : M/s. Zohir & Co./Ms.Vasudha Narvekar

Coram : Haribhau R. Waghmare

Judge, Vacation Court Room No.21

Date : 29/12/2014.

ORDER

Matter is from Court Room No.10 and it is placed before me as incharge of vacation Court.

2. Perused application. Heard ld. advocate for the plaintiffs. Heard ld. advocates for defendants No.4 and 19.

3. Plaintiffs are praying for ad-interim injunction in terms of prayer clause (c) inter alia contending that Hiralal was original tenant of the suit premises. Hiralal died in the year 1968. His wife Mungiben died on 3/3/2008. Mohanlal was son of Hiralal died on 5/8/2010 and defendant Nos.1 to 6 are his heirs. Chaganlal was another son of Hiralal.

He died on 25/3/2009. Plaintiffs are his heirs. Kishore was another son of Hiralal. He is died. Defendant Nos.7 to 9 are his heirs. Shantilal was another son of Hiralal. He died on 6/6/2002. Defendant Nos.10 to 14 are his heirs. Defendant Nos.15 and 16 are sons of Hiralal. Whereas defendant Nos.17 and 18 are daughters of Hiralal. In nutshell, as per plaintiffs, plaintiffs and defendant Nos.1 to 18 are legal heirs of Hiralal. Suit property including suit premises was originally owned by Seth Dawoodbhai Musabhai Jariwala Charity Trust. Defendant No.19 has purchased the suit property. As per plaintiffs, after death of Hiralal, husband of plaintiff No.1 paid rent upto 1984 and after him, plaintiff No.1 has paid the rent of the suit premises but rent receipt is issued in the name of late Hiralal. Defendant Nos.1 to 18 have not claimed tenancy rights in the suit premises. However, defendant Nos.1 to 3 have entered into an agreement with defendant No.19 and made affidavit for redevelopment of the plot and got the suit premises transferred in their name. In nutshell, the plaintiffs are claiming tenancy right by inheritance in the suit premises and apprehend that the defendant Nos.1 to 3 will deprive their right. Ultimately, they have prayed for ad-interim relief.

4. Ld. advocate for the plaintiffs submits that being heirs of Hiralal, plaintiffs have tenancy right in the suit premises. Defendant No.19 is redeveloping the suit premises and if the suit premises is demolished, then it will defeat the plaintiffs' right. Ultimately, he prayed for ad-interim injunction in terms of prayer clause (c) of this application.

5. Per contra, ld. advocate for the defendant No.19 submits that it is the internal dispute between the plaintiffs and defendant Nos.1 to 18.

The rent receipt stands in the name of original tenant Hiralal who died in the year 1968 and till date nobody has approached the defendant No.19 for payment of rent. It is further submitted that the plaintiffs are not residing in the suit premises and as such they are not in possession. Plaintiffs have come up with false case, so no equitable relief can be granted to them.

6. It is submitted on behalf of defendant No.4 that the defendant No.19 is developer. Suit is not between landlord and tenant, therefore, this Court has no jurisdiction to entertain and try this suit. To support this submission, he placed reliance on *Mohinder Kaur Kochar Vs. Mayfair Housing Private Ltd. & ors. Appeal Lodging No.474 of 2012*. He further submits that the minority occupant/tenant cannot be permitted to stop the re-development of the property. To support his submission, he placed reliance on *AM Developers Vs. The State of Maharashtra and ors. Writ Petition No.794 of 2014*. He further submits that the plaintiffs are not in possession of the suit premises. Last rent receipt is of the year 1984. She does not say when she left the suit premises. Even if the suit premises is redeveloped and plaintiffs succeed in the suit, they will get the premises in the redeveloped building, so they will not suffer any loss. As per Section 37(c) of the Specific Relief Act, relief of permanent injunction cannot be granted, otherwise than decree. Ultimately, he prayed for rejection of the application.

7. As noticed herein above this is a declaratory suit. Plaintiffs are claiming tenancy in the suit premises by inheritance. As per plaintiffs themselves, they are not in possession or occupation of the suit premises.

Original tenant is died in the year 1968. Husband of plaintiff No.1 died on 25/3/2009. Last rent receipt placed on record is of the year 1984. The plaintiffs themselves say that Mungiben i.e. wife of Hiralal was residing with the plaintiffs for 30 years before her death in Room No.33, Arsiwala Compound, Mazgaon. Means as per plaintiffs themselves for more than 30 years they are not in occupation or possession of the suit premises. It is not stated by the plaintiffs anywhere as to who is or was in possession of the suit premises after 1984. Plaintiffs have contended that after death of husband of plaintiff No.1, plaintiff No.1 has paid the rent, but no rent receipt to that effect is placed on record. Even if it is accepted to be true, why the plaintiffs have not got transferred the rent receipt in their name till date, is not explained. The relief of injunction is equitable and delay defeats equity. The relief of ad-interim injunction prayed in prayer clause (c) is against all the defendants. Defendant Nos.2,3,5,6 and 16 are yet to be served. The Court has ordered to serve notices on all the defendants. As per plaintiffs themselves, the defendant No.19 is redeveloping the property. As per Section 16(1)(i) of the Maharashtra Rent Control Act, the landlord is entitled for eviction of the tenant, if eviction is sought for demolition of the building for erecting new building and the tenant evicted from such building is entitled to have the premises in the newly erected building. So even if the tenant, who is in occupation of the building can be evicted under Section 16(1)(i) of the Maharashtra Rent Control Act and on his eviction, he is entitled to have premises in the newly erected building. As noted earlier, the plaintiffs are not in possession and occupation of the premises. If at all the plaintiffs succeed in the suit, then as rightly submitted on behalf of defendant No.4, they will be entitled to the

premises in the newly erected building. As such no prejudice or loss will be suffered by the plaintiffs. Since I am at the stage of ad-interim relief no further comment will be appropriate but considering all the above facts, I think that no case is made out to grant ad-interim relief as prayed for. Hence, prayer for ad-interim relief stands rejected.

(Haribhau R. Waghmare)
Vacation Judge
C.R.No.21.

Date : 29/12/2014.

Order Dictated on : 29/12/2014.
Order Transcribed on : 30/12/2014.
Order Checked & Signed on : 30/12/2014.