

IN THE COURT OF SMALL CAUSES, AT MUMBAI.

ORDER BELOW EXH. 09

IN

RAD SUIT No.952 OF 2012

1. Smt. Indradevi Suresh Jain and anr.

Plaintiffs

V/s.

1. Mr. T. K. Mossa Haji KK Abdulla and ors

Defendants

Ld. Adv. for the Plaintiffs : Mr. V. A. Dhadam

Ld. Adv. for the Defendants : Mr. Sohanraj Chopda

Coram : R. K. Kshirsagar

Judge, C.R.No.22

Date : 04.08.2014

: O R D E R :

1. The present application is filed by the plaintiff seeking injunction against the defendant No.1 restraining him from parting with the possession of the suit premises.
2. It was submitted by the plaintiff that the plaintiff has filed the suit for declaration regarding the tenancy right. The defendant No.1 approached the plaintiff and had shown his desire to dispose off the suit premises by transferring the tenancy right in respect of the suit premises. The plaintiff with the consent and permission of the landlord had acquired the tenancy right in respect of

the suit premises in their favour. The defendant No.1 has also accepted the premium in part, that plaintiff become the monthly tenant of the defendant No.1 and 2 in respect of the suit premises. Thereafter the defendant No.1 refused to accept the part premium with malafide intention to dispose off the suit premises. Therefore, plaintiff filed the present suit and requested for grant of injunction. It was stated that if the defendant is not restrained the plaintiff will suffer loss and therefore it is necessary to restrain the defendants.

3. The defendant No.1 filed reply vide Exhibit-24 and opposed the application. It was stated that the defendant No.1 has no intention to part with the possession of the suit premises and therefore the application is required to be dismissed.
4. In the light of rival pleadings of the parties, following points arise for determination of the court and findings thereon are given for the reasons stated herein after.

POINTS

FINDINGS

- | | |
|---|-----|
| 1. Whether the plaintiff has prima facie case ? | Yes |
| 2. Whether the balance of convenience lies in favour of the plaintiff ? | Yes |

3. Whether plaintiff would suffer irreparable injury if his prayer for temporary Injunction is not allowed ? Yes

4. What order ? As per final order.

: R E A S O N S :

5. **POINTS No. 1 to 3** : Heard the learned counsels. Also perused the application and reply and the record. The plaintiff filed the present suit for declaration of tenancy right during the pendency of the main suit. The plaintiff is apprehending that the defendant No.1 might create third party interest. It seems that if the defendant is not restrained, the plaintiff will suffer irreparable loss that cannot be compensated in terms of money. The prima facie case and balance of convenience lies in favour of plaintiff. It also seems that if the defendant is not restrained, it will lead to multiplicity of proceedings and therefore, I answer points Nos.1 to 3 in affirmative and as to point No.4, I proceed to pass the following order.

ORDER

1. The Application Exhibit- 09 is allowed.
2. The defendant No.1, his agents, servants, legal representatives or any person on his behalf are temporarily restrained from parting with the possession of the suit

premises and are further restrained from alienating or creating third party interest in any manner in the suit premises till the final disposal of the suit.

3. The findings given at this stage shall not affect the final decision of the suit.

4. The costs shall abide the final verdict.

Mumbai
Dt. 04.08.2014

(R. K. Kshirsagar)
Judge, C.R. No.22.

Dictated On : 4.08.2014
Transcribed on : 4.08.2014
Checked and signed on : 6.08.2014

(R. K. Kshirsagar)
Judge, C.R. No. 22.