

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1226 OF 1986

Dr.Ravindra Radhakrishna Trivedi & Ors .. Plaintiffs

versus

Shri Shakti Prints Pvt Ltd & Ors .. Contemnor/
Respondents

Mr.A.A.Joshi a/w G.V.Bhagwat i/by Divekar & Co for plaintiffs.
Nikhil Karnawat a/w Jinal Gogri i/by Nivit Srivastav for applicant.
Mr.Deepak Chitnis i/by D.C.C.& Co for the defendant Nos.1 and 2.

CORAM : S.C.DHARMADHIKARI, J.
13th December 2011.

P.C.:

. In the light of the order passed on 14th September 2011, this matter was placed for framing issues. However, at the request of parties on 4th October 2011, the order framing issues was recalled and the matter was listed again for framing issues after one week. Accordingly, today, this suit is placed for framing issues. I have heard parties. Having considered their pleadings in the plaint and the written statement so also the Counter Claim, the following issues arise for determination in Suit No.1226 of 1986:

- (1) Whether the plaintiffs prove that they have acquired the ownership rights in the plots of land bearing Survey Nos.43/7,

43/8, 43/3, 43/6, 43/10, bearing CTS Nos.442, 441, 440, 438, 437 respectively situate at village Chalkala Andheri (E) as contended in paras 1 to 8 and 21A of the plaint?

- (2) Whether the plaintiffs prove that the defendants unauthorisedly encroached and illegally trespassed and encroached upon portion of the said lands owned by the plaintiffs as contended in para 9 of the plaint?
- (3) Whether the plaintiffs are entitled to a mandatory order and injunction from this Court for directing defendants from removing themselves, their belonging, their servants and their agents as also the unauthorised structures put by them on the said plots of lands owned by the plaintiffs as contended in paras 13 and 14 of the plaint?
- (4) Whether the plaintiffs are entitled to vacant and peaceful possession of the said plots of land?
- (5) Whether the plaintiffs are entitled to mesne profits and/or compensation for unauthorised use and occupation of the said land owned by the plaintiff as claimed in para 14 of the plaint and as prayed for in prayed (d)?
- (6) Whether defendants prove that the said property has been in

possession of M/s.Ram Narayan Industries being the proprietary firm of the defendant No.3 since prior to 1960 as contended in para 11 of the written statement?

- (7) Whether defendants prove that the defendant No.3 had installed a boiler alongwith chimney on the suit property in the year 1960 as contended in para 11 of the written statement?
- (8) Whether the defendants prove that the seven structures, existing upon the suit property at the time of filing of the suit, were constructed in the year 1960 as contended in para 11 of the written statement?
- (9) Whether the defendants prove that prior to 1970, the said Ramnarayan Industries were the tenants in respect of the property acquired by the defendant No.1 by the conveyance dated 9.11.1970 as contended in para 11 of the written statement?
- (10) Whether the defendants prove that the entire portion of the suit properties which was unauthorisedly occupied by the defendants was fenced and clearly demarcated by a fencing from 4.10.1960 as contended in para 11 of the written statement?
- (11) Whether the defendants prove that they have acquired title to the suit properties or any part thereof by way of adverse

possession as contended in para 11 of the written statement?

(12) Whether the defendants prove that they have been in continuous use, occupation and/or exclusive, open and uninterrupted possession or enjoyment of the disputed property for over 40 years as contended in para 11 of the written statement?

(13) Whether the defendants prove that they are entitled to maintain possession of the suit properties claimed by the plaintiffs as contended in para 11 of the written statement?

(14) Whether the defendants prove that the suit claim is barred by law of limitation as contended in para 1 of the written statement of defendant Nos.1 and 2?

(15) What order and reliefs?

2} Having perused the counter claim of defendant Nos.1 and 2 and considering the reply thereto of the plaintiffs, the following issues arise for consideration and determination in the Counter Claim No.10 of 2009, in Suit No.1226 of 1986:

ISSUES IN COUNTER CLAIM

(1) Whether the defendants are entitled to a declaration that the

defendant No.1 is in adverse possession of the suit property and have a perfect legal title to the suit property namely land bearing Survey No.s43/7, 43/8, 43/3/, 43/6, 43/10, bearing C.T.S.Nos.442, 441, 40, 438, 437 respectively situate at village Chalkala, Andheri (E) and whether the defendants further prove that the portion of the suit property of which it is claiming adverse possession admeasures about 1450 sq.yards i.e 1202.345 sq.mtrs as contended in para 2 of the counter claim?

- (2) Whether the defendants have been in the exclusive, open and uninterrupted possession of the disputed property adverse to the plaintiffs as contended in para 2 of the counter claim?
- (3) Whether the defendants prove that the amalgamation order obtained by the plaintiffs for amalgamating the suit plots of land with other adjoining properties belonging to the plaintiff No.4 to the suit, is illegal or bad in law or void ab-initio or non-est or in gross violation of the order passed by this Court on 19.11.1987 as contended in para 3(g) of the counter claim?
- (4) Whether the defendants are entitled to a permanent order and injunction against the plaintiffs restraining the plaintiffs from dispossessing the defendant No.1 from the suit property or from

interfering with the possession, use and enjoyment of the suit property by the defendant No.1?

- (5) Whether the defendants prove that the Deed of Conveyance dated 24th July 2002 is void in view of the grounds mentioned in para 3(2) of the counter claim?

3} Mr.Joshi appearing on behalf of the plaintiffs in Suit No.1226 of 1986 states that the plaintiffs affidavit of documents and evidence shall be filed on or before 16th January 2012 with advance copies to the defendants advocate. Let the discovery and inspection be completed within this period and on returnable date parties should come forward and place on record compilation of admitted documents so that they can be marked as Exhibits.

4} As far as counter claim of 2009 is concerned, the plaintiffs to that counter claim shall file affidavit of documents and evidence within a period of eight weeks from today. Stand over for eight weeks.

(S.C.DHARMADHIKARI, J)