

CPM

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

SUIT NO. 1186 OF 2007

Bharat Shantilal Shah and Anr. ...Plaintiffs.  
Vs.  
The Royal Palms (India) Pvt. Ltd. And others ...Defendants.

Mr. Hiralal Thakkar, Senior Counsel with Mr. Vibhav Krishna and Ms. Laxmi Mordekar i/by M/s Juris Consillis for the Plaintiffs.

Mr. Iqbal Chagla, Senior Counsel with Mr. Pesi Modi, Mr. Naval Agarwal, Neville Lashkari, Ms. Y. Khanwilkar, Ms. Dimple Shah and Tejas Joshi i/by M/s Mulla & Mulla & C.B. & C. for the Defendants.

CORAM : A.A. SAYED, J.

DATE : 3RD APRIL, 2012.

P.C.

( By consent, the evidence recorded on 14/03/2012 is corrected. The same is corrected in ink. Office is directed to correct the evidence accordingly.)

Further cross-examination of Witness Mr. Bharat Shantilal Shah (Plaintiff No.1 ) by Mr. Iqbal Chagla, learned Senior Counsel on behalf of the Defendants.

(At the outset, the learned Senior Counsel for the Defendants has drawn my

attention to certain amendments which have been carried out in black ink in the Plaint, including the amendment in the number of plot in para 4. Learned Senior Counsel for the Defendants further pointed out that these amendments have been carried out without any authority inasmuch the order dated 7th June, 2007 passed in Chamber Summons No. 792 of 2007 taken out by the Plaintiffs for amendment to the Plaint, did not permit those amendments. The learned Senior Counsel for the Defendants submits that this is a serious matter inasmuch unless there is a specific order to that effect, no change of the record of the High Court, which is a Court of record, can be made. Mr. Vibhav Krishna, learned Counsel for the Plaintiffs has however, fairly stated that these amendments may have been incorrectly carried out by his Assistant Advocate and he tenders an apology for the same and concedes that there was no specific order to carry out the amendments made in black ink in the Plaint and that there was no order passed allowing any consequential amendments also in Chamber Summons 792 of 2007.

It is however noticed that the order dated 7<sup>th</sup> June, 2007 passed in Chamber Summons No. 792 of 2007 has permitted the Defendants to add/annex Exh. C-2 to the Plaint, which Exh. C-2 specifically mentions Plot

No.81. In view thereof and inasmuch as the learned Counsel for the Plaintiffs has acceded to the mistake at the outset and tendered his apology and further stated that an appropriate Application in respect of the charges already made in black ink in the plaint shall be taken out, I am not inclined to take a serious view of the matter. )

(Shown Question No. 121 and the Answer)

125 Question: Have you checked your record? Are you in position to answer the Question No.121?

Ans. According to me the confusion has arisen because the number of the plot mentioned in the IOD/CC is different and the number of the plot in the Bills issued by the Defendants is different and different numbers of the plots are mentioned in 3 to 4 different places.

126 Question: According to you, therefore, was there any confusion in respect of the plot that you have agreed to purchase?

Ans. According to me there is no confusion in respect of the plot.

(Question No. 121 and Affidavit in lieu of Examination-in-chief dt. 24-10-2010 shown to the Witness)

127 Question : You have not answered the question namely-which of your two statements were correct- the Statement made in the Affidavit in lieu of examination- in-chief dated 24<sup>th</sup> October, 2010 **or** the answer you have given to question No.121?

Ans. : According to me the Plot is the same. However, different numbers have been mentioned in different places.

(Shown P1 to P40 to Witness)

128 Question : In the Exhibits which are on record, there are 10 Bills relating to the property agreed to be purchased by you and they all relate to Plot No.5. In view of this, would you agree that there is no confusion as stated by you earlier?

( At this stage after a debate on whether the question needs to be allowed, particularly in view of the statements as regards possession in the Affidavit

in lieu of examination-in-chief, the learned Senior Counsel for the parties are agreed that the question of possession is not relevant for the purposes of deciding the issue of limitation. The statement of learned Senior Counsel for the Plaintiffs is recorded that despite the statements in the Affidavit in lieu of examination-in-chief as regards possession, the question of possession will not be pressed and argued while making submissions on the issue of limitation. The learned Senior Counsel for the Defendants, in view thereof, does not press this question.)

(Shown answer to question No. 117 to the witness)

129 Question : If the Bills according to you were given to you, can you explain how Mr. Rashesh Shah in the Plaint in Suit No. 1317 of 2007 has stated that the Bill dated 30<sup>th</sup> June, 2003 was given to him?

(On the objection being taken by learned Senior Counsel for the Plaintiffs, learned Senior Counsel for the Defendants withdraws this question and states that he would re-frame the question.)

130 Question : According to you, is the statement made by Mr. Rashesh

Shah in the Complaint in Suit No. 1317 of 2007 that the Bill dated 30<sup>th</sup> June 2003 was given to him is incorrect, in view of the evidence given by you that all the Bills were given to you?

( Learned Senior Counsel Mr. Thakkar has objected to this question on the ground that this question can be answered only by Mr. Rashesh Shah who is the Plaintiff in suit No. 1317 of 2007.

In my view, since the Witness has categorically stated in answer to Question No.117 that " since the Bills were misplaced by me, therefore, he has stated that the Bills are misplaced by the Plaintiff and their group ", this question can be allowed)

Ans : I am not aware.

(Shown last sentence in para 22, page 34 of the complaint to the witness)

131 Question : Can you tell us which of the statement is correct the Statement made in paragraph 22 at page 34 of the Complaint namely "the plaintiffs state that the similar Bills were also submitted to all the 20 purchasers of both the groups including the plaintiffs" **or** the Statement made in the answer to Question 111 namely - the bills were in the name of

other purchasers but they were handed over to me ”.

Ans. According to me both are correct.

(Shown answer to question No.114 to the witness)

132 Question: Did you make any Application to any of the Authorities mentioned in answer to question 114 for copies of the Bills which may have been seized in the raid carried out?

Ans. We had applied, however we did not get it from the Authorities.

(Learned Senior Counsel for the Plaintiffs states that the Plaintiffs desire to examine only one more witness and that a copy of the Affidavit in lieu of examination-in-chief of that witness would be furnished to the Counsel for the Defendants by 30<sup>th</sup> April, 2012.)

( As the Court time is over, by consent, further cross-examination of the witness is deferred to 18th June at 3 p.m.)

( A.A. SAYED, J. )