

(1989) 07 BOM CK 0019

In the Bombay High Court

Case No : Notice of Motion No. 178 of 1989, (in suit No. 557 of 1981)

Ambalal Maganlal Patel and another

APPELLANT

Vs

Indumati Narayan Mohile and others

RESPONDENT

Date of Decision : 18-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 40 Rule 1
Guardians and Wards Act, 1890 — Section 29, 7
Specific Relief Act, 1963 — Section 37

Citation : AIR 1990 Bom 187

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : K.K. Vyas, M.K. Vyas and S.K. Vyas, for the Appellant; M.M. Bhatt, Virendra Tulzapurkar and V.R. Bhatia, for the Respondent

Judgement

S.C. Pratap, J.—This is plaintiff's motion for receiver and injunction pending their suit for specific performance and in the alternative for damages.

2. Hearing Counsel on either side and going through the affidavits and considering the facts and circumstances of the case, I find no merit in this motion. Few facts and circumstances need to be stated. By agreement dated 5th September 1977 between defendants Nos. 1 and 2, who were the then joint trustees of the family trust created for the benefit of the minors Sanjay and Ajay, sons of Avinash Mohile, as the vendors on the one part, and the plaintiffs as the purchasers on the other, defendants Nos. 1 and 2 agreed to convey and sell to the plaintiffs the suit property situated at Swami Vivekanand Road, Bandra, Bombay admeasuring about 900 square metres for a lump sum consideration of Rs. 1,00,001/-. Towards the said consideration, plaintiffs advanced Rupees 35,000/-. In September 1980 defendant No. 1-A attained majority in October 1980 defendants Nos. 1 and 2 by a registered deed, as per the terms of the trust deed transferred the trust fund to defendant No. 1-A. There after defendant No. 1-A entered into an agreement of the sale of the suit property in July 1981 with one Narendra Bhatia. This agreement was entered into by defendant No. 1A for

himself for as guardian of his minor brother defendant No. 1-B for a consideration of Rs. 4,50,000/- in addition to 2000 sq. ft. built upon area being provided to these defendants and their family members free of cost in the developed property. Defendant No. 1-A thereafter filed a miscellaneous application under Ss. 7 and 29 of the Guardians and Wards Act in the District Court at Pune which by its order dated 2nd January 1982 granted the said application and appointed defendant No. 1-A as guardian of defendant No. 1-B as also permission of sell on terms and conditions mentioned therein. After this permission from the District Court, defendant No. 1-A executed registered sale deed in favour of Narendra Bhatia on 3rd February 1982. Defendant No. 1-A handed over possession of part of the suit property in his possession and attorned the tenants to the purchaser Narendra Bhatia. Defendants Nos. 1-A and 1-B were provided with alternative accommodation. The provided also paid full consideration of Rs. 4,50,00/- to the said defendant. Narendra Bhatia also entered into arrangements with the tenants, who pursuant thereto vacated portion of the suit property in their respective occupation. The purchaser also obtained I.O.D. and commencement certificate from the Bombay Municipal Corporation. He also put up construction up to the third slab level. He also entered into agreements of sale of the flats in the new construction with as many as fourteen parties. He spent considerable amount in providing alternative accommodation of the former tenants.

3. In the meanwhile, the plaintiffs filed the instant suit. though the plaint was lodged in September 1980 it was admitted to the file on 20th March 1981. Plaintiffs took out notice of motion for receiver and injunction. The said motion was, however, disposed of in 1984 itself by Lentin, J. as the plaintiffs did not desire by proceed with the same. Thereafter the plaintiffs took no action till the present motion was taken out some time in January 1989. Sujata Manohar, J. declined to grant ad interim relief on this motion observing-

"Defendants Nos. 3 to 6 have already demolished the structure in 1984-85 and have given alternative accommodation to the tenants. [They have also put up three slabs on the property. No ad interim order."

Plaintiffs preferred Appeal No. 99 of 1989 against the above order. The appeal was dismissed on 3rd February 1989 with the observation-

"Dismissed. The appellants are not entitled to any reliefs. This notice of motion prima facie appears to be misconceived."

4. The motion has now come up for final hearing Mr. Vyas, learned counsel for the plaintiffs, vehemently contended that the plaintiffs were entitled to receive as also injunction. He was, however, unable to satisfy this Court the reasons for the gross delay and laches on the part of the plaintiffs in moving this Court by the present motion almost four to five years after the disposal of the earlier motion which was not pressed by the plaintiff. It also cannot be overlooked that the property had been sold by registered conveyance in favour of Narendra Bhatia

who, in accordant with the terms and conditions, had entered into arrangements with the tenants, as also promised alternative accommodation of 2000 sq. ft. free of cost of the original owners as also parted with the full consideration of Rs. 4,50,000/-. Interim reliefs such as those claimed in the present motion by the plaintiffs are basically in the discretion of the Court. Though discretion is expected to be exercised fairly and reason ably, this, in my judgment, is not a case for exercising the same in favour of the plaintiffs. Even assuming that the plaintiffs had initially, when the suit was filed, made out a case for interim relief, the same stood virtually destroyed by their utter silence all these long years. Third party rights have intervened. The one building has been demolished. A new construction has come up to third floor level. And, as indicated, alternative arrangements have been made for the tenants. Agreements have also been entered into with flat purchasers. Again, whereas the consideration for the suit agreement in favour of the plaintiffs was of Rs. 1,00,001/-, the consideration under the agreement in favour of Narendra Bhatia was of Rs. 4,50,000/- plus 2000 sq.ft. of alternative accommodation free of cost to the owners plus proper arrangement with the erstwhile tenants of the old property. In circumstances, it can be seen that the earlier agreement entered into by the two trustees in favour of the plaintiffs can hardly be said to be one in the interests of the then minors, defendants Nos. 1-A and 1-B. This, of course, is a prima facie observation out a circumstances nevertheless not be ignored while exercising discretion judicially.

5. Thus, all facts and circumstances considered, there is no merit in this motion. The same, therefore, fails and is dismissed . Costs costs in the suit.

6. At the instance and request of the plaintiffs "learned counsel Mr. Vyas, the hearing of suit, which is already old to ten years or so, is expedited. As and when the same is ready, it should be placed before the appropriate Courts.

7. Order accordingly.