Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 12/09/2026

(2020) 01 BOM CK 0074

In the Bombay High Court

Case No : Notice Of Motion No. 1531 Of 2016 In Suit No. 342 Of 2013

Rajendra Saxena And Anr — APPELLANT

Vs

Sharda Ratnam And Anr — RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:
Contract Act, 1872 — Section 23
Bombay High Court (Appellate Side) Rule, 1994 — Rule 9(1)

Citation : (2020) 01 BOM CK 0074

Hon'ble Judges : Anuja Prabhudessai, J

Bench : Single Bench

Advocate : Aprana Deokar, M.P. Vashi, Dinesh Mishra, Kher

Final Decision : Disposed Of

Judgement

1. By this Notice of Motion, the Plaintiffs herein have sought following reliefs:-

(a) That the court receiver High Court, Bombay be ordered and directed to

(i) To give notice to the defendant No.1 to remove her belongings from the suit premises

(ii) Failing which, court receiver may remove belongings of the defendant from the suit flat.

(iii) Take physical possession of the suit flat from the defendant by breaking upon the lock of the suit flat, if necessary, by taking police help.

(iv) Hand over quite, vacant and peaceful possession of the suit flat to the plaintiff as agents of the court receiver without payment of any compensation of security.

(v) The Defendant No.2 be ordered and directed to hand over the original title deeds with respect to the suit flat to the plaintiffs, for the purpose of perfecting the title of the suit flat.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-...

(vi) The Defendant No.2 be restrained from causing any obstruction while handing over the possession of the flat to the plaintiffs, while taking possession as agents of Court Receiver.

(b) Ad interim reliefs in terms of prayer (a) be granted.

(c) Cost of the notice of motion be provided for."

2. The dispute in the present case is in respect of a flat being Flat no.1002, 10th Floor, Varsova CHSL, Flat No.1002, RDP-II, MHADA, SVP Nagar, Varsova Andheri-West, Mumbai. The said flat shall be hereinafter referred to as the suit flat.

3. The Defendant No.1, who is the owner of the suit flat had entered into a Memorandum of Understanding (MoU) dated 11th March, 2011 with the Plaintiffs herein for sale of the suit flat for a total sale consideration of Rs.1,20,00,000/-. The Plaintiffs claim that they have paid a sum of Rs.1,06,50,000/- towards part consideration, leaving a balance of Rs. 13,00,000/. The Plaintiffs have averred that they were and are ready to pay the balance amount and perform their part of the contract. The grievance of the Plaintiffs is that the Defendant No.1 did not comply with the terms and conditions of the MoU within the stipulated time and further terminated the agreement/ MoU vide letter dated 16th November, 2011 alleging nonpayment of consideration and compliance of the terms and conditions of the MoU. The Plaintiffs therefore filed a suit seeking a declaration that there is a valid and subsisting agreement for sale by way of memorandum of understanding (MoU) dated 11/3/2011 between the Plaintiffs and the Defendant No.1 for sale of the suit flat and that the purported termination of the MoU by the Defendant No.1 is bad and illegal. The Plaintiffs have also sought for an order and decree against the Defendant No.1 for specific performance of the MoU dated 11/3/2011 by handing over possession of the suit flat on receiving balance consideration of Rs.13,50,000/-.

4. The Plaintiffs had filed a Notice of Motion No.967 of 2013 for ad-interim/ interim relief wherein the learned counsel for the Defendant No.1 had made a statement that the Defendant shall maintain status-quo and shall not create third party rights in respect of the suit flat. The said statement is recorded in orders dated 11/5/2012 and 20/6/2012. The Plaintiffs took out a Notice of Motion No.750 of 2015 for appointment of Receiver alleging that the Defendant No.1, in breach of the orders dated 11/5/2012 and 20/6/2012, obtained a loan by creating a mortgage in respect of the suit flat in favour of the Bank of India. The Plaintiffs tendered two Demand Drafts for a total sum of Rs.13,50,000/- towards balance sale consideration and prayed for a direction to the Receiver to put them in physical possession of the suit flat.

5. In the affidavit-in-reply the Defendant No.1 admitted that she had availed loan and mortgaged the suit flat in favour of the Bank of India. The records indicate that in the course of the hearing of the said Notice of Motion the Defendant No.1 had made a statement before this Court that despite having paid the total loan amount, the Bank had not returned the documents pertaining to the suit flat. The

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

Chief Manager, Bank of India, had filed his affidavit before this Court stating that the documents pertaining to the suit flat were returned to the Defendant No.1 on 25/8/2015. Taking note of the contemptuous conduct of the Defendant No.1, the learned Single Judge of this Court (Coram: Roshan Dalvi, J.) by order dated 2/9/2015 appointed a Court Receiver, with directions to take possession of the suit flat and to put the Plaintiffs in possession as the agent of the Court Receiver; without payment of compensation and security.

6. The Defendant No.1 challenged the said order in Appeal (L) No.709 of 2015. By order dated 7/10/2015 r/w. 13/10/2015 the Division Bench of this Court passed the following interim relief:-

"3. By way of an interim arrangement, we direct the Court Receiver to take formal possession of the suit flat and appoint the Appellant (Original Defendant) as an agent of the Court-Receiver, without payment of security deposit or royalty. The Appellant shall deposit the amount of Rs.65,25,000/- which she has received from the Respondent-Plaintiff with the Prothonotary and Senior Master within two days. The two demand-drafts which were handed over by the Appellant to the Respondents be returned back to the Appellant within 2 days. The balance amount of Rs.41,25,000/- shall be deposited by the Appellant in this Court within four weeks.

4. The Appellant shall also deposit the original documents, viz. (i) original share certificate No.58, bearing member's Reg. No. 58, dated 20.12.1998; (ii) agreement for allotment of flat dated 16.9.1998 between Versova Dhanalaxmi Co-op. Housing Society and Sharda Ratnam, the Appellant herein with the Prothonotary and Senior Master, within 2 days from today. "

7. The order dated 2/12/2015 in Appeal (L) No.709 of 2015 indicates that the Defendant No.1 neither appeared nor deposited the balance amount despite extension of time. The Division Bench therefore dismissed the appeal with directions to the Court Receiver to take possession of the suit flat and implement the order of the learned Single Judge.

8. The Defendant No.1 challenged the said order dated 2/12/2015 before the Hon'ble Supreme Court in SLP No.34954 of 2015 and submitted that in compliance of the order dated 16/12/2015, an amount of Rs.41,00,000/- has been deposited before the Bombay High Court on 31/12/2015. This statement, as recorded in the order dated 4/1/2016, was accepted and it was ordered that the interim order dated 16/12/2015 will enure to the benefit of the Defendant.

9. The Plaintiffs thereafter filed an Interim Application before the Hon'ble Supreme Court inter alia pointing out that the cheque issued by the Defendant for a sum of Rs.41,00,000/- was dishonoured for insufficient funds. The Hon'ble Supreme Court dismissed the SLP No.34954 of 2015 taking note of the fact that the cheque for a sum of Rs.41,00,000/- deposited by the Defendant No.1 before this Court was returned by the Reserve Bank of India due to insufficient funds. The Interlocutory Application filed by the Defendant No.1 seeking extension of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

time to deposit the money was also dismissed by the Apex Court by order dated 14/12/2016.

10. The order dated 2/9/2015 in Notice of Motion No.750 of 2015 having attained finality the Court Receiver visited the suit flat on 30/4/2016 to implement the said order. The report submitted by the Court Receiver indicates that the Defendant No.1 was absent and that the suit flat was locked. The Receiver was therefore unable to take physical possession of the suit flat. This necessitated the Plaintiffs in filing the present Notice of Motion for reliefs as stated above.

11. The Defendant No.1 filed her affidavit-in-reply stating that the SLP was dismissed for failure to deposit an amount of Rs.41,00,000/-. She claims that she had already arranged the money and filed an application before the Hon'ble Supreme Court for extension of time to deposit the said amount. She claims that she has a very good case on merits and prayed that the Notice of Motion may not be decided till the application for extension is finally heard and decided by the Apex Court.

12. During the pendency of this Notice of Motion, this Court allowed the Chamber Summons filed by the Defendant No.2 to implead him as a party to the Suit on the basis that he had purchased the suit flat for sale consideration of Rs.55,20,000/-. The Defendant No.2 has filed his affidavit-in-reply stating that the Defendant No.1 told him that she was in urgent need of money to clear the dues of the Bank of India. She agreed to sell and transfer the suit flat in his favour for a total consideration of Rs.55,20,000/-. He contends that the Defendant No.1 represented to him that except the mortgage in favour of the Bank of India, she has not created third party rights or encumbrance in respect of the suit flat, and that there was no impediment, restrain, or injunction to sell the suit flat. He claims that based on the said representation, he entered into an agreement for sale dated 24/8/2015 in respect of the suit flat. The Defendant Nos.1 and 2 also entered into a Memorandum of Understanding of the even date wherein an option was given to the Defendant No.1 to call upon the Defendant No.2 to reconvey the suit flat within a period of 90 days, for a sum of Rs.69,60,000/-.

13. The Defendant No.2 claims that as per the terms of the agreement, he paid a sum of Rs.27,38,000/- to the Bank of India and paid the balance sale consideration to the Defendant No.1. The Defendant No.1 handed over to him the original title deeds, along with share certificates and put him in possession of the suit flat. He alleges that the Defendant No.1 neither exercised the option of repurchase nor took steps to transfer the share certificate in his name in the records of the Society. When he approached the Society, he learnt that the share certificate could not be transferred in his name as the suit flat was under litigation.

14. The Defendant No.2 claims that the Defendant No.1 has not only cheated

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

him but has played fraud on the Court. He claims that he is a bonafide purchaser and that he cannot be dispossessed at an interlocutory stage without adjudicating his claim. It is also alleged that the Plaintiffs have suppressed relevant and material documents, which, if produced, would clearly indicate that the sale transaction could not be completed as the Plaintiffs had failed to pay the sale consideration and comply with the terms and conditions for the agreement, within the stipulated period of 90 days. He contends that the sale deed could not be executed, as the plaintiffs were not ready and willing to perform their part of the contract

15. In the amended pleadings as well as in the affidavit-in rejoinder the Plaintiffs have averred that the Defendant No.2 has entered into the said transaction in contravention of the injunction order passed by this Court and the said transaction is therefore illegal and void. The Plaintiffs claim that the Defendant No.2 has no right, title and interest to the suit flat and that he has entered into a transaction with the Defendant No.1 only to defeat their rights. The Plaintiffs have denied that the Defendant No.2 is in possession of the suit flat and that he is a bonafide purchaser.

16. The learned counsel for the Plaintiffs submits that the Plaintiffs had undisputedly paid to the Defendant No.1 an amount of Rs.1,06,50,000/- towards sale consideration of the suit flat. She submits that the Defendant No.1 has transferred the suit flat in contravention of the orders in Notice of Motion No.967 of 2013 and order dated 03/08/2015 in Notice of Motion No.750/2015. Relying upon the decision of the Apex Court in Jehal Tanti Vs. Nageshwar Singh (2013) 14 SCC 689, Tayabhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd. (1997) 3 SCC 443 and Vindur Impex and Traders Private Limited and ORs. vs. Tosh Apartments Private Limited and ORs. (2012) 8 SCC 384 she submits that the alleged agreement for sale executed in breach of the order of the Court does not have any legal sanctity and the same is invalid and ineffective.

17. The learned counsel for the Plaintiffs further submits that by the purported agreement for sale the Defendant No.2 had sought to purchase the suit flat at a rate, which is 50% lower than the market rate. The learned counsel for the Plaintiffs contends that the Defendant No.2 had not verified the title documents; he had not made any enquiry with the Secretary of the Society and had not issued a public notice before entering into such agreement. She further submits that even after expiry of the time stipulated in the MoU dated 24/8/2015, the Defendant No.2 had not taken any steps to get the shares of the suit flat transferred in his name. She therefore submits that the Defendant No.2 is not a bonafide purchaser. She submits that the reports submitted by the Court Receiver falsify the contention of the Defendant No.2 that he was put in possession of the suit flat. She submits that the Defendant No.2 has no right, title or interest in respect of the suit flat and that he has entered into a transaction with the Defendant No.1 only to defeat the rights of the Plaintiffs.

18. The learned counsel for the Defendant No.2 contends that the Defendant

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

No.2 had no knowledge of the MoU entered by the Defendant No.1 in favour of the Plaintiffs. He submits that the Defendant No.2 is a bonafide purchaser and is in possession of the suit flat since 24/8/2015. He therefore contends that the Plaintiffs cannot be put in possession of the suit flat by dispossessing the Defendant No.2 at the interlocutory stage. He submits that the Plaintiffs have suppressed material documents, viz. NOC dated 20/6/2012 issued by the Society and emails of the Defendant No.1 requesting the Plaintiffs to make payment of balance amount of Rs.13,50,000/-. He contends that these documents would prima facie prove that the Plaintiffs were not ready and willing to perform their part of the contract within the time stipulated in the MoU. He therefore contends that the Plaintiffs are not entitled for equitable relief of specific performance. In support of this contention he has relied upon the decisions of the Apex Court in Ram Avadh vs. Achhaibar Dubey and Anr. AIR 2000 SC 860, S.P. Chengalvaraya Naidu (dead) by L.R.s Vs. Jagannath (dead) by L.Rs. and Ors. AIR 1994 SC 853, Lourdy MAri David and Ors. vs. Louis Chinnaya Arogiaswamy and Ors. AIR 1996 SC 2814 and Purshottam Vishindas Raheja vs. Life Insurance Corporation of India and Ors. AIR 1982 BOMBAY 523.

19. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

20. It is not in dispute that by MoU dated 11/3/2011, the defendant no.1 had agreed to sell to the Plaintiffs the suit flat for total consideration of Rs.1,20,00,000/-. The relevant clauses, viz. Clauses (3), (4), (6), (8) and (9) of the said MoU read thus:-

"(3) The Purchaser shall make the balance payment to the Seller after getting the NOC from the Society/Bank and other concerned authorities clearing all the dues of whatsoever nature till the date of execution of the Sale Agreement.

(4) It is agreed by and between the parties, that the Seller shall be liable and responsible for payment of all dues, taxes, maintenance, outgoings till the date of handing over the possession and thereafter the Purchaser is liable to pay the same regularly.

(6)That at the time of receiving the balance full and final payment the Seller shall handover the possession, along with all the ORIGINAL Agreements, documents, certificates, receipt of payments made to the Society of all the outgoings etc. pertaining to the said Residential Property and shall also sign and execute necessary forms, NOC, as may be required to comply with the requisite formalities of transfer.

(8) That the Seller will handover the peaceful possession after 90 days (maximum) to the Purchaser after complying with all the terms and conditions and Sale Agreement between the parties.

(9) Payment Modality That the Purchaser will pay the balance amount of Rs.100,00,000/- (One Crore only) accordingly;

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

(A) On signing of Agreement: |Rs.25,00,000/- (Twenty Five Lakh) in Cash and Rs.70,00,000/- (Seventy Lakh Only) in cheque

(B)On Possession (1 week prior to possession):

Rs.5,00,000/- (Five Lakh only).

21. A plain reading of these clauses indicate that the Defendant No.1 was required to clear all the dues and arrears of the Society, obtain a NOC, execute a sale deed and handover possession of the suit flat to the Plaintiffs within a period of 90 days from the date of the agreement. The agreement records that the Plaintiffs had paid to the Defendant No.1 an initial token amount of Rs.20,00,000/- at the time of execution of the MoU. The Plaintiffs were required to pay to the Defendant No.1 an amount of Rs.95,00,000/- on the date of signing of the sale deed. The Plaintiffs were to be put in possession of the suit flat one week after the payment of balance amount of Rs.5,00,000/-.

22. The Plaintiffs have averred that the Defendant No.1 did not pay the arrears of Society Maintenance charges and was not in a position to get NOC from the Society and did not comply with her obligation as contemplated in clause Nos. 3 and 4 of the MoU within a period of 90 days. Furthermore, the Defendant No.1 accepted a sum of Rs.86, 50,000/- from the Plaintiffs after the expiry of 90 days, which fact would prima facie suggest that time was not the essence of the contract. Even otherwise, it is well settled that in the case of sale of immovable property, the fixation of period within which the contract has to be performed does not make time as the essence of the contract.

23. The records indicate that the Plaintiffs had paid to the Defendant No.1 a total sum of Rs.1,06,50,000/- leaving a balance of Rs.13,50,000/-. The Plaintiffs had also paid Rs.37,500/- towards 50% of welfare charges as demanded by the Society. The draft sale deed prepared by the Plaintiffs was approved by the Defendant No.1. The Plaintiff got the same draft stamped on 15/7/2011 and paid a stamp duty of Rs.4,32,600/-. Thus prima facie the Plaintiffs are not guilty of not acting within a reasonable time. The conduct of the Plaintiffs, which is in consonance with the pleadings, prima facie indicate that the Plaintiffs are ready and willing to perform their part of the contract. The material on record prima facie indicates that the sale deed could not be executed within the stipulated time as the Defendant No.1 had failed to discharge her obligation under the contract. Hence, there is no merit in the contention that the Plaintiffs have suppressed the material facts and that they have approached the court with unclean hands. Hence, the decisions relied upon by the learned counsel for the Defendant No.2 are not applicable to the facts of the present case.

24. It is to be noted that in the order dated 11/5/2012 in Notice of Motion No.967 of 2013 filed by the Plaintiffs for ad-interim/interim relief, this Court (Coram: S.C. Dharmadhikari, J.) had recorded the statement of the learned counsel for the Defendant No.1 as under:-

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

"Mr. Damle, the learned counsel, on instructions submits that the Defendant would maintain status-quo as of today in relation to the suit flat, which shall be maintained without prejudice to the rights and contentions of both sides till 25/6/2012."

25. On 20/6/2012 this Court (Coram: B.R. Gavai, J. as his lordship was then was) recorded the statement of the learned counsel for the Defendant No.1 as under:-

"Mr. Damle, the learned counsel for the Defendant states that until further orders are passed by this Court the Defendant shall maintain status-quo in respect of the suit property and they shall not create any third party rights"

26. The records thus indicate that the Defendant No.1 had made a categorical statement before the Court to maintain status-quo and not to create third party rights in respect of the suit property. The Plaintiffs had filed Notice of Motion No.750 of 2015 for appointment of Receiver alleging that despite an undertaking to maintain status-quo and not to create third party rights in respect of the suit flat, the Defendant No.1 had mortgaged the suit flat in favour of the Bank of India by depositing original title deeds. The Defendant No.1 had justified the breach on the ground that she was in need of money and that she believed that obtaining loan by mortgaging the suit flat would not tantamount to breach of the status-quo order. By order dated 3/8/2015 this Court had directed the Defendant No.1 not to deal with, dispose of, alienate, encumber, transfer, part with possession, create any encumbrances or any third party rights of any nature in the suit flat, pending the notice of motion.

27. The agreement dated 24/8/2015, which is the basis of the title of the Defendant No.2, is not only executed during the pendency of the suit but has been executed in clear breach of orders of the court. In Vidur Impex and Traders Pvt. Ltd. (supra) one of the questions before the Apex Court was whether the Appellants-M/s. Vidur Impex, who had purchased the suit property in violation of injunction order passed by the learned Single Judge of the Delhi High Court was entitled to be impleaded as party to the Suit. While considering the nature and effect of an alienation made in violation of an order of injunction, the Apex Court has observed thus:-

"42. ....At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent No.2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

party interest. To put it differently, the agreements for sale and sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity."

43.xxx

44....In the present case, the agreements for sale and the sale deeds were executed by Respondent 2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court. Therefore, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property and the ratio of the judgment in Surjit Singh vs. Harbans Singh would squarely apply to the appellants' case because they are claiming right on the basis of transactions made in defiance of the restraint order passed by the High Court. The suppression of material facts by Bhagwati Developers and the appellants from the Calcutta High Court, which was persuaded to pass orders in their favour, takes the appellants out of the category of bona fide purchaser. Therefore, their presence is neither required to decide the controversy involved in the suit filed by Respondent 1 nor required to pass an effective decree.

(relevant pages 414 and 415, para 42 and 44)"

28. A similar question was considered by the Apex Court in Jehal Tanti (supra). The Apex Court after considering the decisions in Tayabbhai M. Bagasarwala and Vidur Impex (supra) and the provisions of Section 23 of the Contract Act, 1872 has held thus :-

"In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void.

Since the sale deed was executed in favour of Respondent 1 in the teeth of the order of injunction passed by the trial court, the same appears to be unlawful."

29. In the instant case, the Defendant No.1 has not only entered into an agreement with Defendant No.2 during the pendency of the Notice of Motion and the Suit but has transferred the suit flat in blatant violation of the injunction orders passed by this Court. The Defendant No.1 did not disclose the fact of transfer of the suit flat either in the Appeal No.709/2015 or before the Hon'ble Supreme Court in SLP No.34954/2015. The Defendant No.1 also submitted before the Prothonotary the coloured photo copies of the documents by misrepresenting that the original documents were being submitted in compliance with the order dated 07/10/2015 passed by the Division Bench of this Court, when in fact he had handed over the original documents to the Defendant No.2. Taking note of the contemptuous conduct of the Defendant No.1, this Court (Coram : S.J. Kathawalla, J.) by order dated 9th February, 2017 directed the registry to place the papers before the Hon'ble the Chief Justice for initiating suo motu contempt. The records reveal that the Division Bench of this Court has already issued a notice to the Defendant No.1 in terms of Rule 9 (1) of Bombay

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

High Court (Appellate Side) Rule 1994. Such unscrupulous litigant is not welcome in equity jurisdiction.

30. The Defendant No. 2 has taken a refuge under a veil and plea that he is a bonafide purchaser. The Defendant No.2 claims that the pendency of the litigation was not within his knowledge. He was not aware of the injunction order and that he entered into a transaction solely on the basis of the assertion of the Defendant No. 1 that there was no embargo on transfer of the suit flat.

31. The plea of being a bonafide purchaser for value without notice is prima facie not convincing. In fact, the records prima facie indicate that the Defendant No.2 was in a hurry to enter into an agreement. He had executed the said agreement and had paid the entire sale consideration without even verifying the original documents, which were admittedly in custody of the Bank as on the date of the execution of the agreement. He claims to have satisfied himself about the marketable title of Defendant No.1 by accepting her statement and assurance as the gospel truth even though he did not personally know her. The Defendant No.2 was aware that the NOC allegedly issued by the Society to transfer the suit flat in his favour was not annexed to the agreement as mentioned in recital-G of the agreement. He did not ascertain whether the society had in fact issued such NOC and/or the reason for not issuing such NOC. As a prudent purchaser, he did not issue any public notice and did not make any endeavour to ascertain whether the Defendant No.1 had a clear title. He did not take reasonable care and caution to enquire whether the Defendant No.1 had created any encumbrances, whether the suit flat was subject to any litigation and whether she was competent to transfer the suit flat. It is inconceivable that a man of ordinary prudence would enter into such transaction without conducting a bare minimum inquiry. Absence of reasonable and ordinary prudence prima facie belies the contention that he is innocent purchaser or that he had entered into a transaction in good faith.

32. It is also pertinent to note that by purported Agreement of Sale dated 25/8/2015, the Defendant No.2 had agreed to purchase the suit flat for total consideration of Rs.55,20,000/-, while in the year 2011 the Plaintiffs had agreed to purchase the same flat for a consideration of Rs.1,06,50,000/-. The averments in paragraph 27 of the affidavit-in-reply, the Defendant No.2 has stated that the market rate of the suit flat was Rs.1,79,50,000/. It is thus evident that the Defendant No.2 has allegedly purchased the suit flat at a throw away price, which fact prima facie indicates that the transaction was not bonafide.

33. A perusal of the MoU dated 24/8/2015 indicates that Defendant No.1 had reserved rights to repurchase the suit flat on payment of Rs.69,60,000/- within 90 days from the date of the agreement. It is not necessary at this stage to consider whether the transaction evidenced by the MoU and agreement was a loan transaction or an absolute sale with a limited right of repurchase. The fact remains that the Defendant No.1 had not opted to repurchase the suit flat, despite which the Defendant No.2 had not taken any steps to transfer the suit flat in his name.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

34. The Defendant No.2 claims that having learnt that the suit flat was under litigation, he confronted the Defendant No.1. He claims that the Defendant No.1 had once again reiterated her willingness to repurchase the suit flat at a current market rate of Rs.1,79,50,000/-and had accordingly issued two cheques for the said amount. The said cheques were dishonoured with an endorsement that payment was stopped. Though the Defendant No.2 alleges that the Defendant No.1 had cheated him, he has chosen not to take any action against the Defendant No.1.

35. The defense set up by the Defendant No.2 that he was put in possession of the suit flat stands falsified by the reports submitted by the Court Receiver. The report dated 3/11/2015 indicates that the Court Receiver had visited the suit flat on 31/10/2015. He was accompanied by the Defendant No.1. The reports indicate that the suit flat was locked. The defendant No.1 who had the keys of the suit flat opened the lock. He thereafter entered the flat, took symbolic possession of the suit flat, and put the Defendant No.1 in possession of the suit flat as an agent of the Receiver. The report indicates that he had affixed a board on the outer door of the suit flat indicating that the same was under possession of the Receiver.

36. The reports dated 16/12/2015 and 30/4/2016 also indicate that the Court Receiver had once again visited the suit flat to implement the order dated 2/12/2015 in Appeal No.709 of 2015. The reports reveal that the suit flat was locked and hence the Receiver was unable to take physical possession of the same. The reports further indicate that the board affixed by him on the previous visit was missing and hence he had affixed a new board on the outer door of the flat.

The report dated 30/4/2016 also indicates that the Court Receiver had put new locks on the outer doors of the suit flat and sealed the same. The reports thus falsify the contention of the Defendant No.2 that he was put in possession of the suit flat.

37. The aforesaid facts and circumstances prima facie indicate that Defendant No.2 is not a bonafide purchaser for value without notice and hence there can be no equity in his favour. It prima facie appears that the Defendant Nos.1 and 2 have entered into an agreement dated 24/8/2015 only to defeat the rights of the Plaintiffs. The said transaction, which was executed in violation of the court order and the object of which is prima facie unlawful, would not prima facie confer any title or interest in favour of the Defendant No.2.

38. There is a subsisting agreement in favour of the Plaintiffs. They have paid the sale consideration of Rs.1,06,50,000/- and deposited the balance sale consideration of Rs.13,00,000/- before this Court. Hence, equity is certainly in their favour. The Defendant No.1 has refused to complete the sale deed despite receiving almost the entire sale consideration from the Plaintiffs. The conduct of the Defendant No.1 throughout the proceedings has been dishonest and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…

contemptuous. The Court Receiver has not been able to put the Plaintiffs in possession of the suit flat on account of hurdles created by the Defendant No.1. As a consequence thereof, despite order dated 2/9/2015 passed by Single Bench of this Court and in Notice of Motion No.750 of 2015 and order dated 7/10/2015 passed by the Division Bench in Appeal (L) No.709 of 2015, the Defendant No.1 continues to be in possession of the suit flat. Suffice it to say that the Defendants cannot be permitted to obstruct the free flow of justice or make mockery of the majesty of law. Any such attempt needs to be thwarted so as to maintain sanctity and solemnity of court proceedings.

39. Hence, pending the hearing and final disposal of the Suit, the following order:-

(i) The Court Receiver High Court, Bombay is ordered and directed to give notice to the Defendant No.1 within three weeks from the date of this order, to remove her belongings from the suit premises within the stipulated time.

(ii) On failure to comply with the notice, the Court Receiver shall take physical possession of the suit flat from the Defendant No.1, if necessary by breaking open the lock of the suit flat and taking assistance of police.

(iii) The Court Receiver shall prepare an inventory of all the belongings of the Defendant No.1 and keep the same in safe custody at a place provided by the Plaintiffs.

(iv) The Court Receiver shall hand over vacant and peaceful possession of the suit flat to the Plaintiffs as agents of the Court Receiver without payment of any compensation or security.

(v) The Defendant Nos.1 and 2 are restrained from causing any obstruction while taking over the possession or handing over the possession of the suit flat to the Plaintiffs as agents of Court Receiver.

(vi) The Defendant No.2 is directed to deposit before the Prothonotary and Senior Master within three weeks from the date of this order, the original title deeds with respect to the suit flat, if not already deposited.

40. The Notice of Motion stands disposed of.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rajendra-saxena-and-anr-appellant-…