(2019) 10 CAL CK 0002

In the Calcutta High Court

Case No : General Application (GA) No. 815 Of 2013, Civil Suits (CS) No. 299 Of 2012

Saraf Projects Pvt APPELLANT

Vs

Rawalwasia Tubes Pvt. Ltd. & Ors. RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:
Specific Relief Act, 1963 — Section 14(3)(c), 19(b)

Citation : (2019) 10 CAL CK 0002

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Surajit Nath Mitra, Deepak Jain, Pradip Kr. Dutta, Suman Kumar Dutt, Rajarshi Dutta, Bidyut Dutta, Bijan Dutta

Final Decision : Dismissed

Judgement

Arijit Banerjee, J

(1) This is an application filed in a suit for specific performance of an agreement which the plaintiff/petitioner claims to have entered into with the defendant no. 1 for joint development of premises no. 50 and 50/1 Rafi Ahmed Kiwadi Road, Kolkata 700016 (hereinafter referred to as the 'suit premises'). The defendant nos. 2 to 5 were added as defendants to the suit pursuant to an order of the Hon'ble Appeal Court passed in an appeal carried from an interlocutory order passed in the suit. The defendant nos. 2 to 5 admittedly purchased the suit premises from the defendant no. 1 which was the sole and absolute owner thereof, by a registered deed of conveyance dated 15 December, 2012. In the present application the petitioner prays for an order directing the Special Officer who is in symbolic possession of the suit premises to take actual possession of certain portions of the suit premises as mentioned in paragraph 12 of the petition. Further, an order of injunction has been prayed for to restrain the defendant nos. 2 to 5 (in short the 'added defendants') from dealing with and/or disposing of and/or alienating and/or encumbering and/or creating any third

party interest and/or transferring any part or portion of the suit premises.

Case of the plaintiff/petitioner:-

(2) At all material times the respondent no. 1 was the sole and absolute owner of the suit premises which was fully occupied by tenants.

(3) In July, 2007 the respondent no. 1 approached the petitioner and after negotiations it was agreed by and between the parties that:-

(i) The suit premises would be jointly developed by the petitioner and the respondent no. 1.

(ii) Such development shall take place after the respondent no. 1 recovers vacant possession of the suit premises in its entirety by negotiating with the existing tenants.

(iii) The petitioner shall pay to the respondent no. 1 an aggregate sum of Rs. 2.25 crores in instalments out of which a sum of Rs. 1.25 crores shall be utilized by the respondent no. 1 to pay compensation to the existing tenants/occupiers.

(iv) Upon recovering vacant possession of portions of the suit premises, the respondent no. 1 shall make over possession of such vacant portions to the petitioner, who shall hold such portions as tenant thereof.

(v) The balance sum of Rs. 1 crore will be paid by the petitioner to the respondent no. 1 after vacant possession of the suit property in its entirety is received by the petitioner.

The petitioner recorded these terms in a letter dated 20 July, 2007. The terms were accepted and confirmed by the respondent no. 1.

(4) Pursuant to the said agreement the petitioner till date has paid an aggregate sum of Rs. 1,13,50,000/- to the respondent no. 1.

(5) The respondent no. 1 obtained vacant possession of the ground floor and portions of the first floor of the suit premises from the existing tenants and handed over possession thereof to the petitioner by creating tenancy in favour of the petitioner and/or its nominees. The petitioner and/or its nominees remained in possession and occupation of such portions as tenants and also paid rents in respect thereof.

(6) Sometime prior to 23 August, 2012 the petitioner came to learn that the respondent no. 1 was negotiating with others for development of the suit premises. By a letter dated 23 August, 2012 addressed to the respondent no. 1 the petitioner put the aforesaid on record and called upon the respondent no. 1 to perform all its obligations under the agreement with the petitioner. The petitioner did not receive any reply to the said letter.

(7) On 7 September, 2012 the petitioner filed the present suit for specific performance of its agreement with the respondent no. 1. In the suit, the

petitioner filed an application being GA No. 3260 of 2012 praying for appointment of receiver over the suit premises and injunction restraining the respondent no. 1 from disposing of, alienating, etc. the suit premises. On the said application an ex parte ad interim order dated 18 December, 2012 was passed whereby a Special Officer was appointed to make inventory of the suit premises and the respondent no. 1 was restrained from dealing with or disposing of or alienating the suit premises.

(8) The Special Officer visited the suit premises on 21 December, 2012 and then submitted his report. From the said report it would appear that the Special Officer did not find the added defendants in possession of any portion of the suit premises. However a portion was found to be in the possession of the petitioner company and/or its nominees. Thereafter, there was exchange of letters between the petitioner and the respondent no. 1 from which it would appear that the respondent no. 1 admitted having created tenancy in respect of portions of the suit premises in favour of the petitioner. However, there was no mention in the said letters written by the respondent no. 1 that it had sold the suit premises to the added respondents.

(9) Thereafter, further orders were passed on the said interlocutory application in the presence of Learned Advocate for the respondent no. 1. It was not stated before the court that the respondent no. 1 had sold the suit premises to the added respondents on 15 December, 2012. Further, it was never disputed that the petitioner and/or its nominees were in possession of portions of the suit premises having been put in such possession by the respondent no. 1.

(10) On 25 February, 2013 Learned Advocate for the respondent no. 1 served a copy of an application of the respondent no. 1 on the Learned Advocate for the petitioner, for setting aside the report filed by the Special Officer on 11 January, 2013. In the said application, for the first time, the respondent no. 1 disputed that the petitioner or its nominees were in possession of any portion of the suit premises and for the first time the respondent no. 1 mentioned about the sale of the suit premises to the added respondents.

(11) On 1 March, 2013 the petitioner sent one of its representatives to visit the suit premises but he was physically prevented from entering the suit premises. He was also threatened with dire consequences. Police complaints were lodged and the present application was filed on 4 March, 2013.

(12) On the instant application an ex parte ad interim order dated 6 March, 2013 was passed directing the Receiver Special Officer to visit the suit premises without notice and find out the status of the five rooms in respect whereof tenancy was being claimed by the petitioner. The Receiver visited the suit premises and filed a report dated 11 March, 2013. From a perusal of the said report of the Receiver, it would appear that he found that there were changes in status since his first visit.

(13) Thereafter, two further orders were passed on the instant application on 16

April, 2013 and 18 April, 2013 whereby status quo in respect of the suit premises was directed to be maintained. Another Learned Advocate of this Court was appointed to act as Joint Special officer/Receiver along with the Special Officer earlier appointed with a direction on the Joint Special Officers along with the Officer-in-Charge of the concerned Police Station to file a report in Court with regard to the status of the six rooms on the date of the first visit of the Special Officer on 21 December, 2012 and any subsequent change thereof. Such a joint report was filed on 2 May, 2013 after inspection of the suit premises. On 2 May, 2013 a further order was passed directing the Joint Special Officers to put up a board on a suitable place on the outer wall of the suit premises stating that the Joint Special Officers are in symbolic possession of the property.

(14) Mr. S. N. Mitra, learned Sr. Counsel appearing for the petitioner submitted that a comparison of the three reports which are on record would show that the petitioner/its nominees were in possession of portions of the suit premises as on the date of the first visit of the Special Officer. However, subsequently, they were dispossessed unlawfully.

(15) On 14 June, 2013 when this application appeared as 'New Motion', the Court vacated the order dated 18 April, 2013 whereby the Joint Special Officers had been appointed. An appeal was preferred against the said order by the petitioner. The Hon'ble Appeal Court directed maintenance of status quo as regards possession, nature and character of the suit premises. The appeal was disposed of by an order dated 11 December, 2013 when the parties who were proposed to be added as defendants (the purchasers) by the petitioner were added as party defendants and the parties were directed to maintain status quo in respect of the suit property with regard to ownership and possession till disposal of the instant application. The Joint Special Officers were also directed to visit the suit premises again on that date and submit a report with regard to possession before the Single Judge so that the same could be considered at the time of final hearing of the instant application. Mr. Mitra submitted that from the documents on record it would appear that the petitioner was in possession of six rooms in the suit premises by itself or through its nominees from which the petitioner has been wrongfully dispossessed. In support of its case, the petitioner has relied on the following:-

(i) The document dated 20 July, 2007 which records the agreement between the parties to give possession of portions of the suit premises to the petitioner by the respondent no. 1 on recovery of vacant possession of such portions from the tenants and a further agreement that the petitioner shall hold such portions as tenant.

(ii) Rent receipts issued by the respondent no. 1 which are at pages 53 to 55 of the petition.

(iii) The petitioner's letter dated 23 August, 2012 (page 58 of the petition).

(iv) The letters of the defendant no. 1 dated 28 August, 2012 (page 80 of the petition) and 20 December, 2012 (page 84) wherein there was specific admission by the defendant no. 1 that possession of such rooms was with the petitioner as tenant thereof.

(v) The first report of the Special Officer (page 70 of the petition). Though exception was taken by the respondent no. 1 to such report, the application taking exception was dismissed on 31 July, 2014 and no appeal was preferred from the said order.

(16) From the subsequent reports filed initially by the Special Officer and thereafter by the Joint Special Officers, it would appear that one room on the ground floor of the suit premises was in possession of Anjan Aggrotech Ltd., which could not produce any document in respect of its possession and the rooms and/or flats on the first floor were in possession of Zila Project Development Pvt. Ltd. being one of the added respondents. Though the defendant no. 1 in its A/O alleged that at the time of sale of the suit premises it had handed over possession of the vacant portions of the suit premises to the purchaser, yet such contention would be falsified from the deed of conveyance executed by the defendant no. 1 in favour of the purchasers which clearly records that at the time of execution of the deed of conveyance, there was no vacant portion in the suit premises. The defendant no. 1 has not denied the existence and/or authenticity of the rent receipts issued by it and has not explained as to when and how the tenancy it created in favour of the petitioner and/or its nominees were allegedly terminated or surrendered.

(17) Mr. Mitra submitted that in the facts and circumstances of the case the Joint Special Officers should take actual physical possession of the suit premises and hold the same till the disposal of the suit. Mr. Mitra further submitted that possession of the six rooms in question should be restored to the petitioner since the petitioner has clearly been wrongfully dispossessed from the said rooms. In support of his submission that a mandatory injunction for restoring possession can be passed at an interlocutory stage, Mr. Mitra relied on a Division Bench decision of this Court in the case of India Cable Company Ltd.-vs.-Smt. Sumitra Chakraborty, AIR 1985 CAL 248.

Contention of the added defendants:-

(18) The added defendants purchased the suit premises by a registered deed of conveyance dated 15 December, 2012. Prior to such purchase, a notice was published in two newspapers namely, "The Statesman" and "Anandabazar Patrika" on 18 January, 2012 at the instance of the added defendants intimating the public at large about the proposed transfer of the suit premises and inviting objections, if any, from the public. No objections were received from anybody. Accordingly, the added defendants agreed to pay part consideration in the manner indicated in the memo of consideration. A part of the consideration to the tune of Rs. 1.01 crore was paid to the original defendant between 9 December, 2011 and 23 February, 2012. The balance sum of Rs. 1.50 crores out

of total agreed consideration of Rs. 2.51 crores was paid to Oriental Bank of Commerce, Brabourne Road Branch to redeem the mortgage of the title deeds in respect of the suit premises. Thereafter, the deed of conveyance was registered on 15 December, 2012.

(19) Although the suit was filed on 7 September, 2012, yet, the interlocutory application was moved ex parte more than three months thereafter and an order was obtained on 18 December, 2012. On that date, the original defendant was not the owner of the suit property. Therefore, no interim order was binding on the added defendants in respect of the suit property. Pursuant to the ex parte interim order dated 18 December, 2012, learned Special Officer visited the suit premises accompanied by the plaintiff's representative. Since, no favourable report could be obtained, another ex parte interim order was obtained on 6 March, 2013 without serving notice on the added defendants.

(20) Prior to addition of the added defendants as parties to the suit, learned Special Officer had visited the suit premises on two occasions without notice to the added defendants and filed two separate reports dated 11 January, 2013 and 11 March, 2013 respectively. From the said two reports the possession of the plaintiff in respect of any portion of the suit premises cannot be established. A third report was filed by the Joint Special Officers on 2 May, 2013 pursuant to the Court's order dated 18 April, 2013 passed on the present application. Even from the said report, it does not appear that the plaintiff was in possession of any portion of the suit premises at any material point of time.

(21) From a joint reading of the three reports, filed by the Special Officer/Joint Special Officers, the alleged possession of the plaintiff or its nominee in respect of any portion of the suit premises cannot be established. Further, there are various contradictions and anomalies in the said reports.

(22) The petitioner relied on some alleged rent receipts (annexure E, pages 53 to 55 of the petition). None of the rent receipts bears any date. The rent receipts at page 53 are alleged to have been issued by the original defendant in the name of the plaintiff's nominees. Such nominees are not parties to the suit nor was any possession by such alleged nominees found during the visit of the Special Officer/ Joint Special Officers.

(23) The last two alleged rent receipts are said to be for three months i.e., April to June, 2008 whereas the first rent receipt at page 53 is for five months i.e., for August to December. No rent receipt has been annexed for any subsequent period of time nor is there any pleading with regard thereto. The alleged rent receipts are obviously manufactured documents and have been brought into existence to try and establish the plaintiff's possession in respect of portions of the suit premises.

(24) On 14 June, 2013 the present application came up for hearing before a Learned Single Judge who passed an order vacating the earlier order dated 16 April, 2013 and also clarifying that the order dated 18 April, 2013 by which the

Special Officers were put in symbolic possession of the suit property shall stand vacated as the proposed added defendants were in possession of the suit premises.

(25) On an appeal being preferred from the said order, the Division Bench passed an order dated 11 December, 2013 by remanding the application to the learned Single Judge with a direction to the parties to maintain status quo in respect of the suit property with regard to the ownership and possession till the present application is finally disposed of by the learned Single Judge. The Joint Special Officers were directed to visit the suit property again on that date and submit a report in a sealed cover with regard to the possession before the learned Single Judge. Accordingly, a fourth report was filed by the Joint Special Officers on 8 January, 2014 wherefrom also the possession of the plaintiff cannot be established. In the above factual matrix, Mr. Dutta, learned Sr. Counsel appearing for the added respondents formulated the following points:-

(i) The plaintiff has failed to establish possession in respect of the suit premises or any portion thereof.

(ii) The plaintiff had proceeded against the original defendant who was no more the owner of the property since 15 December, 2012.

(iii) The plaintiff has obtained ex parte interim orders one after another after publication of public notice in newspapers at the instance of the added defendants without serving notice on the added defendants. This shows the mala fide conduct of the plaintiff.

(iv) The plaintiff has not made out any case that the added defendants had knowledge about the existence of an alleged development agreement between the plaintiff and the original defendant prior to execution and registration of the deed of conveyance in respect of the suit premises in favour of the added defendants.

(v) The added defendants are bona fide purchasers of the suit premises for valuable consideration without notice of any prior alleged agreement in respect of the self-same premises.

(vi) The plaintiff has failed to prima facie establish its alleged readiness and willingness to perform its obligations under the alleged development agreement with the original defendant.

(26) Mr. Dutta then referred to Sec. 19 of the Specific Relief Act, 1963 and submitted that specific performance of a contract cannot be enforced against a transferee for value who has paid money in good faith without notice of the original contract. The added defendants are such transferees and no decree of specific performance can be passed against them.

(27) Learned Sr. Counsel then referred to Sec. 14(3)(c) of the Specific Relief Act, 1963 and submitted that a litigant cannot claim any relief unless he has a legal

right in his favour. In support of this proposition, he relied on the decision of the Apex Court in the case of Sree Jain Swetambar Terapanthi Vid (S)-vs.-Phundan Singh & Ors., (1999) 2 SCC 377. Learned Sr. Counsel then submitted there cannot be any injunction against the rightful owner. In this connection he relied on the decisions of the Apex Court in the cases of Gujarat Bottling Co. Ltd. & Ors.-vs.-Coca Cola Co. & Ors., (1995) 5 SCC 545 and Mahadeo Savlaram Shelke & Ors.-vs.-Pune Municipal Corporation & Anr., (1995) 3 SCC 33.

(27) Mr. Dutta next submitted that on the date of transfer of the suit property in favour of the added defendants, there was no restraint order. Accordingly, all restraint orders which were passed subsequently are bad in law and liable to be set aside. In this connection he relied on the decision of the Apex Court in the case of Kishorsinh Ratansinh Jadeja-vs.-Maruti Corporation & Ors., (2009) 11 SCC 229, paras 38 to 41.

(28) It was next submitted that parties should give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession, to plead with sufficient particularity the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. It was submitted that the plaintiff has failed to do so in this case. In support of this legal proposition, reliance was placed on the decision of the Apex Court in the case of Maria Margarida Sequeira Fernandes-vs.- Erasmo Jack De Sequeira (Dead) Through LRs, (2012) 5 SCC 370, paras 68 to 71.

(29) The plaintiff has suppressed in its pleadings the factum of the public notices issued at the instance of the added defendants. This amounts to suppression of material fact and playing fraud on Court. Such a party is not entitled to any relief. In support of this submission reliance was placed on the decision of the Apex Court in the case of S.P. Chengalvaraya Naidu (Dead) by LRs-vs.-Jagannath (Dead) by LRs. & Ors. (1994) 1 SCC 1.

(30) Mr. Dutta prayed for dismissal of the present application.

(31) I have considered the rival contentions of the parties. The fight has boiled down to one between the plaintiff and the added defendants (hereinafter referred to as "the purchasers").

(32) It is not in dispute that some sort of an arrangement/understanding was entered into by and between the plaintiff and the original defendant for joint development of the suit premises after recovery of possession thereof from various tenants who were in occupation of different portions of the suit premises. The plaintiff argues that it was more than an arrangement/understanding and it was a legally enforceable agreement recorded in the plaintiff's letter dated 20 July, 2007 addressed to the defendant. The defendant accepted the contents of the said letter through its director. The plaintiff further contends that in all it paid to the defendant Rs. 1,13,50,000/-. Alleging that the defendant refused to perform its obligations under the agreement, the plaintiff filed the present suit

against the defendant for specific performance of such agreement.

(33) In the suit initially an application was filed by the plaintiff, being G.A. No. 3260 of 2012. Diverse interlocutory orders were passed on the said application. Pursuant to such orders, initially a Special Officer and subsequently Joint Special Officers filed several reports. Such reports were called for by the Court essentially to ascertain who was/ were in occupation of the suit premises and more particularly whether the plaintiff was in occupation of any portion of the suit premises as was claimed by it.

(34) The first report of the Special Officer is dated 11 January, 2013. The second report of the Special Officer is dated 11 March, 2013. The third report was filed by the Joint Special Officers and the Officer-in-Charge, Park Street Police Station, Kolkata on 2 May, 2013. The fourth report dated 8 January, 2014 was filed by the Joint Special Officers in terms of the Hon'ble Division Bench order dated 11 December, 2013.

(35) I have carefully gone through all the four reports. The contents of the said reports are not reconcilable and vary from each other. In particular, the first two reports cannot be reconciled with the third and the fourth reports. While there is a reference to the plaintiff being in occupation of certain rooms in the suit premises in the first two reports of the Special Officer, the third and the fourth reports which are more detailed and inspire more credence, do not mention the presence of the plaintiff at all. In other words, as per the third and fourth reports the plaintiff was not in occupation of any portion of the suit premises.

(36) The essential prayers in the present interlocutory application are for an order directing the Special Officers to take actual physical possession of certain portions of the suit premises as indicated in the sketch plan which is 'Annexure-Y' to the petition and also for an order of injunction to restrain the purchasers from dealing with and/or disposing of and/or alienating and/or encumbering and/or creating third party interest and/or transferring any portion of the suit premises. The only question is whether the plaintiff is entitled to such interlocutory reliefs.

(37) It is indisputable that advertisements were published in the 18 January, 2012 editions of "Anandabazar Patrika" and "The Statesman". By the said advertisements learned advocate for the purchasers notified the public at large that the original defendant claiming to be the absolute owner of the suit premises was intending to transfer the suit premises and invited objections from anybody who was interested in opposing such proposed transfer. The plaintiff must be deemed to have knowledge of such proposed transfer by reason of the said public notices. However, the plaintiff did not raise any objection.

(38) The suit was filed on 7 September, 2012. However, the first interlocutory application was moved only on 18 December, 2012 when an ex-parte interim order was obtained by the plaintiff for appointment of Receiver for the purpose of making inventory of the suit premises and also an order of injunction restraining the defendant from dealing with, alienating etc. in so far as the suit premises is

concerned. However, in the meantime, on 15 December, 2012, by a registered deed of conveyance, the original defendant sold and transferred the suit premises to and in favour of the purchasers (added defendants). Hence, on the date when the first interlocutory order came to be passed by this Court, the defendant was no more the owner of the suit premises. Since the purchasers were not parties to the suit, they were naturally not bound by any interlocutory order. The interim order of injunction was continued from time to time till the same was vacated by a learned Judge by an order dated 14 June, 2013 passed on the present application. The earlier order directing the Joint Special Officers to be in symbolic possession of the suit premises was also vacated. On an appeal preferred from the said order the Hon'ble Division Bench by its order dated 11 December, 2013 directed the parties including the purchasers to maintain status quo in respect of the suit property with regard to ownership and possession till final disposal of the interlocutory application by the Single Judge. The purchasers were also added as party defendants in the suit.

(39) I am prima facie of the view that the plaintiff is not entitled to any interlocutory relief as has been prayed for. It is not in dispute that ownership of the suit premises vested in the purchasers on 15 December, 2012 when there was no restraint order of any competent Court. Nor has the plaintiff been able to make out a case that the purchasers entered into such transaction with the original defendant with knowledge of some earlier agreement being in existence between the plaintiff and the original defendant in respect of the suit premises. I am prima facie of the view that Section 19(b) of the Specific Relief Act disentitles the plaintiff to a decree for specific performance as against the purchasers who are bona fide transferees of the suit premises for valuable consideration without notice of any contract between the plaintiff and the original defendant as regards the suit premises. If that be so, no question of passing any order of injunction as against the added defendants can or does arise. An order of interlocutory injunction as prayed for would only be in aid of the final relief of specific performance. If the final relief cannot be granted, no interim relief in aid of such final relief also cannot be granted.

(40) It is trite law that a mere agreement to purchase a property or for joint development of a property does not create any legal interest or legal right in favour of the intending purchaser. If such person does not have any legal right no question of protecting such alleged right can or does arise. Section 14 (3)(c) of the Specific Relief Act which enumerates cases where the Court may enforce specific performance of a contract, reads as follows:

"(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:-

(i) the building or other work is described in the contract in terms sufficiently precise to enable the Court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed."

(41) As I read the above provision, this is not a case where the plaintiff can be said to be having a substantial interest in the performance of the alleged contract with the original defendant or that the interest is of such a nature that compensation in money for non-performance of the contract will not be an adequate relief. If the plaintiff can establish at the trial of the suit that the original defendant has acted in breach of the development agreement entered into by it with the plaintiff, the plaintiff can be sufficiently compensated by way of damages if the same can be proved.

(42) It is also an established law that no injunction can be granted against the rightful owner of a property particularly in favour of a person who has not been able to establish any legal right in respect of the property. In this connection, one may refer to the decision of the Hon'ble Apex Court in the case of Mahadeo Savlaram Shelke & Ors. - vs- Pune Municipal Corporation & Anr., (1995) 3 SCC 33.

(43) The plaintiff heavily relied on six rent receipts issued by the defendant in support of its case that it is in possession of portions of the suit premises as tenant. Copies of the rent receipts are at pages 53-55 of the petition. In one of the rent receipts the period mentioned is August, 2008 to December, 2008 and the same is in favour of one Mahesh Singhania. In another rent receipt the period mentioned is May, 2008 to December, 2008 and the same is in favour of one Kashinath Sinha. The other four rent receipts are for the period April, 2008 to June, 2008 in favour of the plaintiff. The rent receipts do not inspire much credence and in any event pertain to a period of more than four years prior to filing of the suit. I am unable, only on the basis of such rent receipts to hold at this stage that the plaintiff has some interest in respect of the suit premises qua tenant. Further, as indicated above, the last two reports of the Joint Special Officers record the presence of all those who are occupying various portions of the suit premises, but there is no reference to the plaintiff being in occupation of any portion of the suit premises.

(44) There may or may not be a legally enforceable contract between the plaintiff and the original defendant. I am not required to decide such a question in the present proceeding. However, one thing is clear. The plaintiff cannot maintain any claim against the added defendants who are what is commonly referred to in English Law as equity's darling, i.e. bona fide purchaser of property for value without notice of any rival claim. The original defendant may have taken the plaintiff for a ride, on which I express no opinion. The remedy of the plaintiff, if

at all, is against the original defendant. Since specific performance of any alleged contract between the plaintiff and the original defendant is no more possible, the plaintiff's remedy sounds only in damages which it may claim against the original defendant if so permitted by law.

(45) For the reasons aforesaid, I am not inclined to continue the order of status quo as regards ownership and possession of the suit premises. In my opinion, the plaintiff has not been able to make out a prima facie case for such interlocutory reliefs. Further, in my considered view it will not be fair to continue such an order against the added defendants. The plaintiff shall have to be content with a claim in damages against the original defendant which will be decided at the final trial of the suit.

(46) G.A No. 815 of 2013 is, accordingly, dismissed. It is clarified that the observations made in this judgment and order are only for the purpose of deciding the present interlocutory application.

(47) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

Later

After delivery of judgment learned advocate for the plaintiff/petitioner prays for stay of operation of the judgment and order. Such prayer is considered and refused.

