IN THE CITY CIVIL COURT AT BORIVALI DIVISION,
DINDOSHI, GOREGAON, MUMBAI.
DRAFT NOTICE OF MOTION NO. OF 2018
IN
S.C. SUIT NO.2508 OF 2018

SMT. Hajrabi Gani Sayyed. … Plaintiff

Versus

Ms. Density Realty Pvt. Ltd. & Ors. ... Defendants

Ld. Advocate Manoj Mhatre for plaintiff.
Ld. Advocate Ghag with Adv. Tanna for defendants.

CORAM: HIS HONOUR JUDGE
SHRI J.V. DESHMUKH.
(C.R.No.4)
DATE : 11th October, 2018

ORDER

1. The plaintiff has moved present notice of motion for grant of ad-interim relief in terms of prayer clause (a), (b) and (c) of the notice of motion.

The brief facts of the notice of motion are as follows :

2. The plaintiff's husband Sayyed Gani had acquired suit property on the strength of an agreement dated 23.12.1970. The said agreement was not registered one, however, it was acted upon. The

plaintiff's husband had taken possession of it. He was also possessing adjacent immovable property bearing Survey No.340/3, C.T.S. No.328. The present immovable property is standing in the name of Maharashtra Government. After acquiring it, the plaintiff's husband constructed a structure and chawl and had given to the various tenants on the tenancy basis. The plaintiff's husband died in December, 1990. One Mr. Jagdish Prasad Madhavprasad Goyal died in the year 1972. The plaintiff approached the LRs of deceased Jagdish and requested them to confirm the said sale deed. Hence, another agreement came to be executed between two persons on 11.06.1980 i.e. plaintiff and wife of deceased Jagdishprasad, namely, Radhadevi and his brother Govindram. As there were structures standing on the suit property, hence, plaintiff had given an application for levying the NA Tax before Additional District Dy. Collector on 11.06.1980. It was allowed by order dated 06.08.1999. The plaintiff's husband during his life time constructed a structure on it. While purchasing the suit property after the death of the said Mr. Jagdish Prasad Goyal, the negotiations took place through one Hasmukh Oza, who was looking after the affairs of Goyal family represented to be the family's care taker. Thus plaintiff purchased the said property from Radhadevi Goyal and Govindram, after the negotiations. As the earlier agreement was registered, said Hasmukh Oza represented to the plaintiff that one Jagdishprasad Goyal has expired and said two persons are the legal heirs of the deceased. He had applied for the insertion of his name as legal heir in the property registere card. The name of Radhadevi Goyal and Govindram were inserted in the property card. The plaintiff had also no objection for the insertion of name of Radhadevi and Govindram in the

property register card pertaining to the suit property. All the things were going smoothly till January, 2000, however, in January, 2000, Hasmukh Oza informed the plaintiff to get deed of conveyance registered. The plaintiff made inquiry about it to the Sub Registrar Office, however, plaintiff could not get much information. Hasmukh Oza informed the plaintiff that he would call upon Smt. Radhadevi Goyal and Govindram for the registration of deed of confirmation. Believing on the words and without suspecting any foul play agreed for registration of deed of confirmation for betterment of the title. After waiting for a period of 3 months, the plaintiff upon suggestion of Hasmukh Oza got the said deed of confirmation registered with Sub Registrar of Assurances. The plaintiff received a communication dated 29.04.2002 informing the plaintiff that on the basis of Deed of Confirmation and Index-II, the name of the plaintiff cannot be inserted in the property register card. The plaintiff being a poor lady could not understand the said communication and did not proceed further, however, the suit property was and is remained in her possession. In the meantime, in the year 2012, the plaintiff realized that defendants with assistance of some disgruntled tenants were trying to upsurp the suit property and was intending to implement a scheme under the provisions of Regulation 33(10) of the Development Control Regulation. The plaintiff filed Suit No.424/2012 before the Hon'ble Court and asked for injunction against the defendants. The said relief was rejected. Thereafter various tenants were in the process of vacating their respective tenements and handing over the possession of the same to the defendants, hence, plaintiff filed RAE Suit before the Hon'ble Court of Small Causes at Bandra against 21 tenants. The plaintiff had also filed an application for injunction against

the said tenants. The said injunction application was allowed by order dated 23.02.2013. The defendants' representative immediately approached plaintiff with malafide intention and informed the plaintiff that the said suit before Small Causes Court could not survive any purpose and suggested to resolve the dispute amicably. The plaintiff put reliance on it and consent terms were drafted in between the parties. Memorandum of Understanding was executed between plaintiff, her children and defendants on14.10.2013. The defendants represented for giving up the right of the plaintiff in both the immovable properties i.e. Survey No. 340/3, City Survey No. 329 i.e. suit property and Survey No.340/3, City Survey No.328. The plaintiff would be given an amount of Rs.1,45,00,000/- and two residential accommodation of 350 sq.ft. Carpet each. The plaintiff and her children were given an opportunity to read the said contents of the documents. The plaintiff learnt in May 2018 that defendants with malafide intention has applied with the office of City Survey for insertion of its name in the property register card. The plaintiff immediately raised objection to the said office, hence, plaintiff has constrained to institute the present suit along with notice of motion. The plaintiff prays that defendants be restrained from acting upon the Deed of Conveyance dated 03.07.2012 pertaining to the suit property by ad-interim relief. He also prays that defendants be restrained by ad-interim relief from putting up any proposal of development before any planning authority. The defendants be restrained by ad-interim relief from creating third party interest in the suit property.

3. I heard oral arguments advanced by both the parties at length. Considering above referred facts and circumstances, following point arise for my determination and my findings on the said point are as follows :

	Point	**Findings**
1.	Does plaintiff is entitled for ad-interim relief in terms of prayer clause (a), (b) and (c) of the notice of motion?	In the negative.
2.	What order ?	As per final order.

REASONS

4. The Ld. Advocate for the plaintiff put reliance on the prima facie material i.e. Power of Attorney, Agreement dated 23.12.1970, NA Order, Notice issued by City Survey Office, Statement given by Hasmukh Oza, Property register card, Deed of Confirmation dated 26.04.000, Index-II, Communication dated 22.03.2002 and 29.04.2002, List of Tenants, Order dated 23.02.2013, Consent terms, Memorandum of understanding dated 14.10.2013, Copy of the application together with annexures and objection raised by SRA Department.

5. I have gone through the record and proceeding. On perusal of it, it shows that according to the plaintiff her husband has executed an agreement dated 23.12.2017 and acquired the suit property, however, the said agreement is not registered. Secondly, the Ld. Advocate for the plaintiff vehemently advanced in his argument that MOU dated 14.10.2013 and consent terms are false and frivolous documents. He further alleged that contents were not readover to the plaintiff and copies were not provided to the plaintiff. The Ld. Advocate for the defendants

categorically denied the said fact. Thus right of the plaintiff over the suit property is material controversy in between the parties. From record, it also reveals that defendants have filed caveat No.546/2018 in the present proceeding, therefore, considering the totality of these circumstances, I do not incline to grant ad-interim relief as prayed for. Hence, I answer point No.1 in the negative and proceed to pass following order.

ORDER

Ad-interim relief is hereby refused.

Sd/-
(J.V. DESHMUKH)
J U D G E
CITY CIVIL COURT,
DINDOSHI, MUMBAI.

11/10/2018

Date of dictation : **11/10/2018**
Date of transcription by steno : **12/10/2018**
Date of order signed by HHJ :
Date of delivery to CC

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER."

UPLOADED ON 16.10.2018 AT 04.30 P.M. **PRASAD SHARAD TARE, STENOGRAPHER**

Name of the Judge (with Court Room No.)	HHJ Shri J.V. Deshmukh.
Date of Pronouncement of Judgment/Order.	11/10/2018
Judgment/Order signed by P.O. on	15/10/2018
Judgment/Order uploaded on	16/10/2018