2025 INSC 663

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. _____ / 2025
(Arising out of SLP (C) No(s). 2657/2025)

Tushar Himatlal Jani ... Appellant

versus

Jasbir Singh Vijan & Ors. ... Respondents

JUDGMENT

SURYA KANT, J.

Leave granted.

2. The instant appeal is directed against the order dated 30.07.2024 passed by the High Court of Bombay (**High Court**) restraining the Appellant from dispossessing Respondent No. 1 or creating any third-party interest in the disputed premises.

3. The facts leading to the instant appeal are that the Appellant's father was the owner of a plot admeasuring 22,000 square feet bearing C.T.S. Nos.443(part), 451(part), 452A(part) at Vittalwadi, Ghatala Village, Chembur, Mumbai. Out of the said area, the Appellant's father leased out 11,250 square feet i.e. the subject land, to a partnership firm, namely M/s Silver Chem (India)/Respondent No.2, which was

owned by the Vijan family members in 1972. It seems that upon the death of his father, the entire property devolved upon the Appellant. The Appellant terminated the above-mentioned lease agreement *vide* notice dated 11.02.2008 and, in furtherance thereof, filed Eviction Suit No. 119/148 of 2008 before the Small Causes Court at Bombay (**Small Causes Court**).

4. Notably, Respondent No.1, who claims to be the legal heir of one of the partners of Respondent No. 2, allegedly runs a business from the suit structure in the name and style of M/s Asset Motors. He, thus, filed an Impleadment Application in the Eviction Suit, contending that he is a necessary and proper party whose rights would be directly affected by the outcome of the proceedings. Respondent No.1 postulated his undivided share in the business of Respondent No. 2 by virtue of a Memorandum of Understanding executed amongst the Vijan family members and further relied on his institution of a separate suit (bearing No.441/2014) before the High Court seeking partition of his 1/6th undivided share in all the properties owned and held by the Vijan family. The Small Causes Court allowed the impleadment application *vide* order dated 06.10.2016. The Appellant, being aggrieved by the aforesaid order, preferred a revision petition before the Appellate Small Causes Court, which was allowed *vide* order dated 03.05.2019, setting aside the order of impleadment.

5. Members of the Vijan family, i.e. the partners of Respondent No. 2 and Respondent No. 1, purportedly entered into a Family Settlement Agreement on 09.06.2021 to resolve their *inter se* differences, which referred to Respondent No. 1's entitlement to 550 square feet area within the subject land. This Family Settlement was the outcome of mediation efforts facilitated by a learned Mediator appointed by this Court in several petitions between members of the Vijan family. According to Respondent No.1, the Agreement ostensibly provided him with an undivided share in the premises, wherein he claims to have been allocated 550 square feet out of the total area of 22,000 square feet with entitlement to 'receive right, title, interest, free of any encumbrances' therein.

6. In the aftermath of this settlement, several consequential events unfolded. Evidently, the partners of Respondent No. 2, along with Respondent No.1, entered into a Lease and License Agreement dated 15.10.2021, with M/s KMG Global as the licensee, for a period of 12 months in respect of the subject land. The Appellant has categorically asserted that this Agreement was executed without his consent and knowledge. Subsequently, Respondent No. 2 firm and its partners claimed to have surrendered their tenancy rights on 19.10.2022 *qua* the subject land. Pursuant to these developments, Respondent No. 1 once again filed an impleadment application in the Eviction suit relying

on the Family Settlement Agreement. He simultaneously lodged an application before the Registrar of Firms seeking recognition as a partner in Respondent No. 2 firm. Whilst these applications remained pending, Respondent No. 1 instituted a separate suit, which, according to the Appellant, was merely an attempt to create a paper trail of Respondent No. 1's alleged physical possession of the disputed area in the subject land.

7. It appears that following the surrender of tenancy rights by Respondent No. 2 and its partners, the Appellant unconditionally withdrew the Eviction Suit *vide* order dated 13.01.2023, wherein the Small Causes Court also rejected Respondent No. 1's second application for impleadment. Consequently, the Appellant effectuated a leave and license agreement dated 11.04.2023 with M/s KMG Global over a built-up area of 2,200 square feet.

8. Thereafter, Respondent No.1, asserting his status as one of the partners of Respondent No.2, on the basis of the Family Settlement Agreement, filed a suit bearing R.A.D. Suit No. 519/2023 before the Small Causes Court seeking declaration of his tenancy rights with respect to an undivided area of 550 square feet purportedly forming part of the premises leased to Respondent No. 2. Respondent No.1 averred in this fresh suit that by virtue of his partnership status in Respondent No.2 as per the Family Settlement Agreement, any

surrender of tenancy rights by Respondent No.2 firm *qua* the subject land without his signature or consent would be illegal and non-binding. Respondent No.1 also filed an application bearing No. Exhibit 10 praying for interim protection in the form of his possession over the area measuring 550 square feet and restraining the Appellant from dispossessing him therefrom. The Small Causes Court, *vide* order dated 27.04.2023 granted interim protection to Respondent No.1 and subsequently confirmed the same *vide* order dated 10.05.2023. The aggrieved Appellant preferred an appeal which was allowed by the Appellate Bench of the Small Causes Court *vide* order dated 20.12.2023.

9. Respondent No.1 consequently filed Writ Petition (C) No.763/2024, which stands allowed and by way of impugned order, the High Court has restored the order dated 27.04.2023 of the Small Causes Court and granted injunction in favour of Respondent No. 1.

10. The aggrieved Appellant is thus before this Court.

11. Mr. Shyam Divan, learned Senior Counsel for the Appellant, contended that the impugned injunction order has effectively paralyzed the Appellant's legitimate redevelopment plans, causing substantial financial detriment. He underscored that despite the disputed area of 550 square feet being merely a small fragment of the entire property, the restraint *qua* this portion has brought the entire project to a

grinding halt. He further propounded that the High Court gravely erred in issuing an injunction in the absence of any eviction proceedings initiated by the Appellant against Respondent No. 1. Mr. Divan posited that Respondent No. 1 lacks the *locus standi* to obstruct the Appellant's development rights as he is neither in lawful nor actual possession of the subject land. It was advanced that the original tenants had unequivocally surrendered their tenancy rights, thereby conferring complete and unencumbered rights upon the Appellant to deal with his property.

12. *Per Contra*, Mr. Arunabh Chowdhury, learned Senior Counsel appearing on behalf of Respondent No. 1, vigorously urged that the impugned order is in the nature of a *simpliciter* injunction not to dispossess Respondent No.1 from the subject property without due process of law and has been in force for more than 20 months with only a brief hiatus in the *interregnum*. He staunchly maintained that the Appellant has not filed any suit to evict Respondent No. 1, rather he withdrew the Eviction Suit filed against Respondent No. 2 unconditionally *vide* order dated 13.01.2023. He further expounded that rights in the disputed property emanate from a Family Settlement Agreement mediated through a Mediator appointed by this Court, and allowing the instant petition would overturn the Consent Order passed by this Court in SLP (Crl.) No. 5587 of 2020. Mr. Chowdhury adduced

that the putative Surrender Letter relied upon by the Appellant is *ex facie* forged and illegal, inasmuch as it is bereft of any reference to any area being surrendered; it is not signed by all partners; and it inexplicably purports to surrender valuable property rights without any consideration.

13. Having heard learned Senior Counsels on behalf of both the parties and after perusing the record, we deem it approprite to clarify at the outset that the issue regarding the tenancy rights of Respondent No. 1 or of the partners of Respondent No. 2, who happen to be his family members, is sub-judice before the Small Causes Court in R.A.D. Suit No. 519/2023. The short question that falls for our consideration thus is whether the High Court was justified in restoring the interim injunction in favour of Respondent No. 1 in a modified term during the pendency of the Suit.

14. The High Court has, in the impugned order, noted that Respondent No.1 is a tenant/joint tenant of the subject land based on the Appellant's alleged admission acknowledging his possession. Mr. Shyam Divan, however, strongly refuted this finding, contending that the Appellant's counsel had characterized Respondent No. 1 as a rank trespasser during the course of inter-party negotiations and such references, made in the context of settlement discussions, cannot be

construed as conclusive admissions for the purpose of granting injunction by the High Court.

15. The law governing the grant of interim injunction is well-settled. This Court, through a catena of decisions, has consistently held that before granting an interim injunction, the Court must satisfy itself of three essential prerequisites: *firstly*, the existence of a *prima facie* case in favour of the applicant evincing a reasonable probability of success at trial; *secondly*, that the balance of convenience lies in favour of granting the injunctive relief; and *thirdly*, that the applicant would suffer irreparable injury or harm not adequately compensable in damages if the injunction is refused. It is only when these three conditions are cumulatively fulfilled that an interim injunction ought to be granted.

16. Applying the principles delineated above to the facts at hand, we are of the considered view that the High Court erred in granting the injunction in favour of Respondent No.1. We say so for the reason that the Appellant is incontrovertibly the absolute owner of the property, with the disputed area constituting merely a fraction of the entire premises. The Appellant has already entered into an agreement to redevelop the property. In these circumstances, the restraint imposed by the impugned injunction significantly circumscribes the Appellant's legal right to derive commercial benefit from his property.

17. It further seems to us that Respondent No.1 has failed to establish a *prima facie* case in his favour as the question of tenancy rights claimed by him is pending adjudication before the Small Causes Court, and at this stage, material ambiguities persist regarding the validity of his claim. Even though Respondent No. 1 claims rights and partnership in the Respondent No. 2 firm through a Family Settlement Agreement, such contention requires deeper scrutiny, which can only be undertaken during the course of trial of his civil suit. Concerning the balance of convenience, it decidedly tilts in favour of the Appellant, considering that the disputed area is merely 550 square feet out of the total area of 22,000 square feet, and the Appellant has already entered into a leave and license agreement dated 11.04.2023 with M/s KMG Global covering a built-up area of 2,200 square feet. The injunction has thus inordinately impeded the entire redevelopment project for a relatively small disputed portion. Moreover, the Appellant would suffer irreparable injury if the injunction is allowed to operate, given that the protracted delay is not only causing substantial financial losses but also affecting the Appellant's contractual obligations, which cannot be adequately compensated at a belated stage.

18. Conversely, Respondent No. 1 would not suffer any irremediable loss as his alleged tenancy rights over an area measuring 550 square feet can be adequately safeguarded.

19. For the reasons aforestated, we allow the instant appeal and set aside the impugned order of the High Court dated 30.07.2024. However, with a view to balance equities, the Appellant is hereby directed to keep one unit measuring about 550 square feet reserved in the developed property as a security to protect the alleged rights of Respondent No.1, in the event that the Suit pending before the Small Causes Court is decided in his favour.

20. We clarify that this order does not express any opinion on the merits of the tenancy dispute pending before the Small Causes Court. The said Court shall proceed to adjudicate the matter in R.A.D. Suit No.519/2023 in accordance with law, uninfluenced by any observations made herein and expeditiously.

.....J.
(SURYA KANT)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
May 13, 2025