

Filed On 29 JUN 2010

IN THE COURT OF CIVIL JUDGE JUNIOUR DIVISION PUNE,
AT PUNE

R.C.S. NO. /2009

SMT. EDNA SUSHILA SAMUEL
AGE:- 70 YEARS, CCC. :- HOUSEHOLD,
R/AT. :- 36/1, GIDNEY PARK,
PUNE -411 001

V/S

PLAINTIFF

1. KARAN GROUP DEVELOPMENT CORPORATION)
A REGISTERED PARTNERSHIP FIRM)
THROUGH IT'S PARTNERS)1A. Mr.DIPAK VILASRAO JAGTAP)
AGE:37 OCCU:BUSINESS)
R/AT: 4, ABHIVADAN 1284,)
SHIVAJINAGAR, PUNE-411 005.)1B. MR.KALYAN BABURAO TAWARE.)
AGE :- 45 YRS, OCC:- BUSINESS)
R/AT: 4, ABHIVADAN 1284,)
SHIVAJINAGAR, PUNE-411 005.)

DEFENDANT

2. MUNICIPAL CORPORATION OF THE)
CITY OF PUNE, CORPORATION)
DEFENDANT)
BUILDING, SHIVAJINAGAR,)
PUNE-411 005.)(Summons/ Notice may be served on
the commissioner)APPLICATION U/O 39 R 1/2 OF
CIVIL PROCEDURE CODE

The Plaintiff most respectfully sheweth as under;

1. Description of Property - All the piece and parcel of the immovable property bearing S. No. 59/1, 59/2, 59/3 and admeasuring about 00 H 76 Gunthas, 00 H 74 Gunthas & 02 H. 55 Gunthas situated at Village-Wadgeon Sheri, within the limits of Pune Municipal Corporation District-Pune and within the jurisdiction of sub registrar Haveli, Pune. and the same is bounded by as under :-

On or towards East :- Property of Mr. Bhandalkar
On or towards West :- Property of Mr. Kharadkar
On or towards North :- Ambro Pvt. Ltd. Co.

On or towards South :- Mula River.
(Herein after referred to as 'SUIT PROPERTY')

2. It is submitted that the mother of the plaintiff was tenant in the suit property since 1940 and after the death of the mother of the plaintiff, plaintiff came in possession of the suit premises as lawful tenant and since then is in possession till today.
3. It is further submitted that the Plaintiff has filed one Reg. Civil Suit No. 1109/2003 for the permanent Injunction against owners of the Suit Property and is pending in the Civil Judge Senior Div. Pune (Tankhiwale Saheb) (Herein after referred to as the 'SAID SUIT') in which plaintiff has filed application for temporary injunction against the defendants and The Hon'ble court has come to the conclusion that the plaintiff is in lawful possession of the suit property and Hon'ble court has passed the order below Exh- 5 dated 23/05/2007 of the above said suit and as per the said order the defendants are restrained from disturbing the possession of the plaintiff on the suit property till the disposal of the said suit. However Def 1A & 1B claim that the said order is not binding on them and are claiming independent right over the suit property.
4. It is further submitted that the defendant in the said matter had preferred the appeal against the order passed in R.C.S. No. 1109/2003, and the same has been dismissed by the district court. Therefore the plaintiff has legal and peaceful possession of the suit property till today.
5. The defendant no.2 in the present suit is Municipal Corporation for the city of Pune established under the provisions of B.P.M.C. Act 1949; the defendant is also the planning Authority within the meaning of the provisions of the provision of Maharashtra Regional and Town Planning Act, 1966, which is hereinafter referred to as M.R.T.P. Act.
6. It is further submitted that the Def No. 1A and 1B in present suit have entered into a development agreement (registered with Sub

Registrar Haveli VII at 9879/1/53 dt 24 Nov 2004) with the owners of the suit property and Def 1A and 1B and their Architecture Mr. Mijumdar had illegally applied for the amalgamation and building lay out plan to the defendant Corporation which is approved by the defendant corporation bearing No. DPO/10844/H/81 dated 23/03/2007. (Hereinafter referred to as "SAID ALLEGED AMALGAMATION AND LAYOUT").

7. It is submitted that inspite of the settled possession of the plaintiff over suit property Defendant No. 1A,1B & 2 in present suit in conspiracy has got sanctioned the alleged amalgamation and Lay out and on the basis of the said illegal and non-est lay out amalgamation certificate the Defendants 1 A & 1 B are trying to disturb the possession of the plaintiff on the suit property.
8. It is submitted that the Defendant No. 2 in present suit has not considered the possession of the plaintiff while sanctioning alleged amalgamation and layout plan and due to the same the Def. No. 1A & 1B in conspiracy with defendant Corporation are trying to disturb possession of the plaintiff on the suit property as per the said alleged amalgamation and layout plan. It is further submitted that the Defendant No. 2 in present suit has not considered that there is possession of the present plaintiff on the suit property and without having possession and inspite of the fact that the property is under litigation defendants in conspiracy with each other have obtained such illegal alleged amalgamation and layout plan and are claiming illegal possession on the basis of the illegal alleged amalgamation and layout plan.
9. It clearly shows that to defeat the right of the plaintiff and also to achieve illegal and wrongful gain and to achieve illegal objects defendant 1,1A & 1B in conspiracy with the Defendant No. 2 had got sanctioned the said alleged amalgamation and layout plan.
10. It is further submitted that at the time of sanctioning the said alleged amalgamation and layout plan, defendant No. 2 had not followed the

due process as per Law and Practice and rules made under the statute for amalgamation and layout plan. It is further submitted that defendant No.2 had overlooked the settled possession of the Plaintiff with respect to the suit property and not even bothered to serve the plaintiff with a notice intimating the application moved by the present defendants No. 1A & 1B to the plaintiff, however inspite of the knowledge of the same the defendant No. 1 A & 1B in conspiracy with the defendant No. 2 falsely and wrongly got sanctioned the said alleged amalgamation and layout plan. As such sanctioned the said alleged amalgamation and layout plan is false, frivolous and the said alleged amalgamation and layout plan is required to be declared

Non-Est and as such or otherwise the same is required to be declared null and void and Non-Est.

11. It is further submitted that on the basis of the above said development agreement and illegal and null and void amalgamation and building layout plan the Defendants 1A & 1B have on various occasions tried to dispossess the plaintiff and when the plaintiff tried to restrain them by referring to the injunction order given in her favour they have stated that "the order of injunction is not binding on us as we are not party to the suit" and are trying to effect construction and trying to change the nature of the suit property and defeat the claim of the plaintiff, the plaintiff is under severe apprehension that the present defendant No. 1 A & 1B may dispossess the plaintiff and construct on the portion of the suit property and change the nature of the suit property and defeat the claim of the plaintiff. As such or otherwise it has now become necessary to declare the said alleged amalgamation and building layout plan null and void and Non-Est and it is also necessary during the pendency of the suit to restrain defendant No. 1A, 1B and 2 from dispossessing the possession of the plaintiff and to restrain the defendants from acting upon the said illegal alleged amalgamation and building layout plan and carrying out construction on the basis of the said alleged amalgamation and building layout plan and or changing the nature of the suit property.

12. It is further submitted that cause of action arisen to file the present suit first time on 23/03/2007 when defendant got sanctioned the said amalgamation and building layout plan. It again arose when plaintiff visited the suit property and it appeared that the Defendant No. 1A & 1B were trying to encroach on the suit property on 15/05/2010 and thereafter also occurring day to day and the suit filled today is well within the limitation.

13. It is further submitted that the behavior and act of the defendant No. 1A, 1B & 2 is fraudulent, dishonest and arbitrary is beyond the preview and scope of the statute.

14. Plaintiff is filing the present suit for permanent injunction to restrain Defendants 1A, 1B & 2 from dispossessing possession of plaintiff and Declaration of the said alleged amalgamation and building layout plan bearing No. DPO/10844/H/81 dated 23/03/2007. The plaintiff therefore value the suit for the purpose of the Court fees, ^{₹ 1000/-} ₹ 1000/- being the jurisdiction and for Advocates fees etc. at Rs. 1000/- being the subject matter of the dispute is not susceptible to the of monetary evaluation under Sec. 6 (iv) (j) of the Court Fees Act 1959.

15. That the suit property is situated within the territorial jurisdiction of this Hon'ble Court as such or otherwise this Hon'ble court has jurisdiction to try and conduct the suit.

16. It is submitted that it will take time to decide the matter on merit in the mean time the defendants are trying to create some false and frivolous record and documents and thereby trying to dispossess the possession of the plaintiff and defeat the right of the Plaintiff to achieve their illegal object. As such now it has become just and necessary for the plaintiff to seek orders to stop such illegal activities of the Defendants as such it is necessary to permanently restrain the defendants from dispossessing the possession of the plaintiff and acting upon the said amalgamation and building lay out plan to the defendant Corporation which is approved by the defendant corporation bearing No. DPO/10844/H/81 dated 23/03/2007 either

personally or through its officers, servants employees or agents with regards to the suit property.

17. In view of the above and in the interest of justice it is just and necessary that during the pendency of the suit the order of Ad-interim / interim injunction be passed as prayed in the payer.

18. It is submitted that the plaintiff has strong prima facie case and the balance of convenience lies in favor of the plaintiffs. If the order of Ad-Interim / interim Injunction is passed in favor of plaintiff then no injustice, prejudice or loss of any nature will be caused to the defendants and if the order is not passed it will cause sever injustice, hardship and irreparable loss to the plaintiffs.

19. It is therefore prayed that;

- a. That the defendants may kindly be restrained by an order of temporary injunction from dispossessing the possession of the plaintiff and acting upon the said amalgamation and building lay out plan to the defendant Corporation which is approved by the defendant corporation bearing No. DPO/10844/H/81 dated 23/03/2007 either personally or through its officers, servants employees or agents etc.
- b. Ad-Interim relief in terms of prayer clause (a) above may kindly be granted.
- c. Plaintiff be awarded cost of the Application.
- d. The Hon'ble court be pass any other order in the interest of justice.

An affidavit in support is filled herewith.

PUNE

DATE: 29/06/2010

ADV. FOR PLAINTIFF

VERIFICATION

I, SMT. EDNA SUSHILA SAMUEL AGE:- 70 YEARS, CCC. :-
HOUSEHOLD, R/AT. :- 36/1, GIDNEY PARK, PUNE -411 001, DO
HEREBY STATE ON SOLEMN AFFIRMATION THAT THE CONTENTS OF
PARA 1 TO 14 ARE TRUE AND CORRECT TO THE BEST OF MY
KNOWLEDGE, BELIEF AND UNDERSTANDING. HENCE I HAVE SIGNED
HEREUNDER ON THE DATE MENTIONED ABOVE AT PUNE.

PLAINTIFF

PLAINTIFF