

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2287 OF 2015

CHANDANMAL CHUNILAL OSWAL
THROUGH LRS'

PETITIONERS

VERSUS

RAVINDRA GOVARDHANDAS DISA
THROUGH LRS'

RESPONDENTS

Mr.P.B.Pawar, Advocate for the petitioners.

Mr.Y.G.Gujarathi, Advocate for respondent Nos. 12 and 13.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/07/2015

PER COURT :

1. I have heard Mr.Pawar, learned Advocate on behalf of the petitioners and Mr.Gujarathi, learned Advocate on behalf of respondent Nos.12 and 13.

2. The petitioners' grievance is as against respondent Nos. 12 and 13. Their Spl.Civil Suit No.8/1991 has been decreed in terms of the order dated 21/12/2012.

3. The petitioners/plaintiffs preferred Civil Appeal No.33/2013. By an order dated 08/01/2015, passed by the learned Appeal Court below Exh.40, the following observations have been made while rejecting the application.

"9. I have already discussed that it is admitted position that the property is very old and is in dilapidated condition. It is not

denied by the appellants that the respondents are residing in some part of the suit property. It can also be seen from the record of the learned Trial Court that Municipal Corporation, Dhule, has declared this property as dangerous. Under these circumstances, if the respondents will be restrained from making any type of work in the suit property, they will definitely suffer irreparable loss. So also as the ownership of the property is yet not transferred in favour of the appellants, the respondents will be deprived of their lawful right, if they will be restrained from doing any work in the suit property.

10. So far as right of parties is concerned, I found that respondent Nos. 12 and 13 are having right to carry out work in the suit property. Considering these points, I found that the balance of convenience lies in favour of the respondents, it will be definitely subject to the decision of the present appeal as per doctrine of lis pendence described under section 52 of the Transfer of Property Act. Considering these points, I found that no irreparable loss will be caused to the appellants if the temporary injunction as prayed will not be granted. On the contrary, if at this stage the respondents will be restrained from doing lawful act, they will suffer more irreparable loss. Hence I answer point Nos. 2 and 3 in favour of respondent Nos. 12 and 13. As such the application deserves to be dismissed. Hence I proceed to pass the following order :"

4. In the light of the above observations, Mr.Gujarathi submits that the petitioners have still not being dispossessed to the extent of their possession in the suit property. He further states that the

portion which is being possessed and occupied by the plaintiffs is not being demolished and the appeal before the Appeal Court is listed for final hearing on 11/08/2015.

5. Mr.Pawar submits that considering the statement made above, the petitioners are satisfied.

6. In the light of the above, this petition is disposed of without causing any interference in the impugned order dated 08/01/2015 below Exh.40 by recording the statement of the respondents, as above.

7. The Appeal Court is expected to hear the appeal on 11/08/2015 and shall endeavour to decide the said appeal on or before 30/09/2015. Needless to state, the Appeal shall be decided on its own merits.

(RAVINDRA V. GHUGE, J.)