

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.387 OF 2015
WITH
CIVIL APPLICATION NO.500 OF 2015**

Shri Bapusaheb Vitthal Bedare & Ors. .. Appellants

vs.

Shri Laxman Daji Bedare .. Respondent

Mr.U.B.Nighot i/b Mr.Hamid D. Mulla for the appellant

Mr.Ajay A. Joshi for the respondent

**CORAM : K.K.TATED, J.
DATED : 06/04/2015**

PC:

1 Not on board. At the request of Advocate for the appellant, matter is taken on board for urgent orders.

2 This Appeal from Order is preferred by defendant challenging the order dated 17.1.2015 passed by learned District Judge-1, Pandharpur below Exhibit 5 in Regular Civil Appeal No.1 of 2015 restraining appellants defendants, their agents by an order of temporary injunction from interfering with the possession of the respondent plaintiff over the suit land till the decision of the Regular Civil Appeal No.1 of 2015.

3 In the present proceeding, the respondent plaintiff filed Regular Civil Suit No.153 of 2000 for specific performance of the contract and for perpetual injunction in respect of the suit land i.e. 81 R land out of agricultural land bearing Gat No.272/1, area 2 Hector, 13 Ares, situated at Village Bathan, Taluka Mangalwadha, Dist. Solapur. In that Regular Civil Suit, plaintiff preferred application below Exhibit 5 for injunction restraining the defendants from disturbing their possession in respect of the suit property. That application below Exhibit 5 was decided by Civil Judge, Junior Division, Mangalwedha on 25.10.2001 allowing plaintiff's application. The operative part of the said order reads thus:

“The defendant nos.1 to 4 their agents and employees are hereby restrained by temporary injunction from causing obstruction and interference into the plaintiff's possession over the suit land until the disposal of this suit.”

4 Thereafter the Trial Court by judgment and decree dated 2.12.2014 dismissed the plaintiff's suit. Hence, the plaintiff preferred Regular Civil Appeal No.1 of 2015 and preferred application for injunction below Exhibit 5. In that application, lower appellate court passed impugned order dt.17.1.2015.

5 The learned counsel for the defendant submits that the lower appellate court at the time of passing impugned order dated 17.1.2015 failed to consider the relevant facts on record. He submits that admittedly, the plaintiff was not in possession of the suit property when he filed Regular Civil Suit No.153 of 2015. He submits that after the

order passed by Trial Court below Exhibit 5 on 25.10.2001, the plaintiff obtained possession of the suit property. He submits that the lower appellate court without considering the merits of the matter decided the application filed by the plaintiff only on the ground that during the pendency of the suit, injunction order was running against the defendant. He relies on the judgment of the Apex Court in the matter of *Kashi Math Samsthan and Another vs. Shrimad Sudhindra Thirtha Swamy and Another* (2010) 1 SCC 689. On the basis of these submissions, the learned counsel for the appellant defendant submits that the impugned order passed by the lower appellate court dated 17.1.2015 be set aside.

6 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Appeal from Order. He submits that during the pendency of the suit, there was injunction order restraining appellants defendants from disturbing the plaintiff's possession of the suit premises. Same order was continued by the lower appellate court during the pendency of the appeal preferred by them. He submits that there is no substance in the present Appeal from Order and same be dismissed.

7 It is to be noted that the Appeal preferred by the respondent plaintiff being Regular Civil Appeal No.1 of 2015 is pending before the lower appellate court. Interim protection was continued in favour of the respondent plaintiff since 25.10.2001. Considering these facts and the documents on record, appellate court allowed the application filed by plaintiff below Exhibit 5. After going through the impugned order passed by the lower appellate court as well as order passed by the Trial

Court dated 25.10.2001, I do not find any substance in the present Appeal from Order. The authority relied on by the appellant in the matter of *Kashi Math Samsthan and Another vs. Shrimad Sudhindra Thirtha Swamy and Another (Supra)* is not applicable in the facts and circumstances of the present case. In paragraph 16 of the said authority, the Apex Court specifically held that court has to consider balance of convenience or irreparable loss or injury at the time of passing order of injunction. In the present proceeding, respondent plaintiff is in possession of the suit property since 2001.

8 Hence, Appeal from Order stands rejected.

9 In view of dismissal of the Appeal from Order nothing survives in the Civil Application. Same stands rejected as infructuous.

(K.K.TATED, J.)