

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLCIATION NO.175 OF 2014
IN
FIRST APPEAL NO.42 OF 2014

Brijveersingh Malik and Another ...Applicants/Defendants
vs.
Akash Shashikant Bhabera and Another ...Respondents

Mr. A.M. Saraogi, for Appellants.
Mr. R.S. Datar, for Respondent No. 1.

CORAM : K.K. TATED, J.

4TH MARCH 2015

P.C. :-

Heard learned counsel for the parties.

2] Liberty granted to the Applicants to delete the name of the Respondent No. 2. Amendment to be carried out during the course of the day.

3] This application preferred by the Defendants for staying the operation and the implementation of the impugned judgment and decree dated 03-12-2013 passed by the Joint Civil Judge, Senior

Division Judge, Thane in Spl. C. S. No. 518 of 2007 directing the Defendants to handover the vacant and peaceful possession of the suit flat i.e. Flat No. 201, (admeasuring 724 sq.ft.), Hill View, B wing, 2nd Floor, Plot No. A-198, Sector No. 20, Nerul (GES), Node Nerul, Navi Mumbai (suit property).

4] The learned counsel on behalf of the Applicants submits that if decree passed by trial Court is executed by the Respondents-Plaintiffs, nothing will survives in the present proceeding. He submits that, Applicants/ Defendants agreed to purchase the flat as per the registered agreement dated 03-03-2006. Since then they are in possession of flat. The said agreement is not properly considered by the trial Court. He submitted that they have good chance of success. He submits that in the interest of justice, the Hon'ble Court be pleased to stay the operation and implementation of the judgment and decree passed by the Joint Civil Judge, Senior Division Judge, Thane in Spl. C. S. No. 518 of 2007 till the hearing and final disposal of First Appeal.

5] The learned counsel for Respondent No. 1-Plaintiff vehemently opposed the present Civil Application. He submits that the trial Court directed the Defendants to hand over the vacant and peaceful

possession of the suit premises. He further submits that if this Court comes to a conclusion that Defendants are entitled for interim relief, in that case, the Defendants may be restrained by an order of injunction from creating third party right, title and interest in respect of the suit property. He further submits that Defendants be directed to deposit the reasonable amount towards the compensation in this Court. He submits that during the pendency of present First Appeal, the Defendants be directed to deposit the sum of Rs. 25,000/- p.m. towards compensation.

6] I heard both the sides at length. Considering the submission of Applicant and as they are in possession of suit premises, following order is passed:-

a) The operation and implementation of impugned decree dated 03-12-2013 passed by the Joint Civil Judge, Senior Division Judge, Thane in Spl. C. S. No. 518 of 2007 is stayed till the final hearing the First Appeal.

b) During the pendency of First Appeal, the Applicants/ Defendants are restrained by an order of injunction from creating third party right, title and interest in respect of the suit property.

c) Liberty granted to Respondent No. 1/original Plaintiff to prefer appropriate application if he so desire for claiming

compensation in respect of suit property during the pendency of present First Appeal and that application will be decided on its own merits.

d) Civil Application stands disposed of accordingly.

(K.K.TATED J.)