

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.110 OF 2015
WITH
CIVIL APPLICATION NO.140 OF 2015**

Jainnuddin Mohinnudin Shaikh and Others ... Appellants
vs.
Bharat Ramchandra Pansare ... Respondent

Mr. M.V. Keny i/b. Mr. Suresh Dubey, for the Appellants.
Mr. D.K. Mishra, for the Respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **12th OCTOBER, 2015**

P.C.:

. This Appeal from Order is directed against the order dated 12th January, 2015 passed by the learned Judge of the Bombay City Civil Court, Greater Bombay in Notice of Motion No. 1652 of 2014 in Short Cause Suit No. 1269 of 2014.

2. The Suit is filed for possession of the suit premises, injunction and the appointment of the Court Receiver. The Notice of

Motion is taken out for the appointment of Court Receiver under Order 40 Rule 1 of Code of Civil Procedure and also for further directions. The said Notice of Motion is partly made absolute and the Plaintiff is appointed as an agent of the Court Receiver and the Defendants are directed not to create third party right in the suit premises.

3. The learned counsel for the Appellants has submitted that though the order is challenged by the Appellants on the grounds that the Appellants have though raised the preliminary issue of maintainability of the suit, the learned Judge has appointed Court Receiver as a licensee of the Plaintiff and therefore the suit can not be entertained by the Bombay City Civil Court but it should be transferred to the Small Causes Court. He further submitted that, the learned trial Judge instead of framing the preliminary issue and deciding the same, he entertained the Notice of Motion. He submitted that on merits the Appellants have good case and they are not the trespassers and are in possession of the suit premises. He further submitted that the documents which are used by the Plaintiff are false and bogus and learned Judge ought not to have relied on the same.

4. The learned counsel for the Respondent i.e. original Plaintiff opposed the Appeal.

5. Perused the plaint, Notice of Motion and also the order dated 12th January, 2015 passed by the learned Judge of the trial Court. The learned Judge though has not framed the issue of maintainability as preliminary issue, has dealt with the point of maintainability in para 10 of the order. It is rightly held by the learned Judge on the basis of the documents and on pleadings that the status of the Appellants can not be said licensee but appears to be the trespasser and therefore the City Civil Court is the appropriate Court to have the jurisdiction. The Court Receiver is appointed and he is directed to take possession of the suit premises under Order 40 Rule 1 of the Code of Civil Procedure and the Plaintiff is appointed as an agent of the Court Receiver. The learned counsel for the Appellants has interpreted the said order that it amounts to handing over of the possession to the Plaintiff by the Defendants. After going through the order and the operative part of the order of the trial Court, it appears that the Court Receiver is directed to take *De-jure* possession of the suit premises and the Plaintiff is appointed as an agent of the Court

Receiver. Handing over the possession would amount to decreeing the suit. The only restriction imposed on the Defendants is not to create third party right. It appears from the order of the trial Court that the trial Court has not disturbed the possession of the Defendants and only appointed the Court Receiver who is directed to take possession Order 40 Rule 1 of Code of Civil Procedure. Therefore, on the point of possession, the Plaintiff and Defendants has any clarification, they are free to approach the trial Court.

6. The order passed by the trial Court is hereby maintained. The parties may approach the trial Court for any clarification of the order.

7. Hence, the Appeal from Order stands dismissed.

8. In view of the above, the Civil Application No. 140 of 2015 stands disposed of.

(MRS.MRIDULA BHATKAR, J.)