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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.149 OF 2015
IN
NOTICE OF MOTION NO.2488 OF 2013
IN
SUIT NO.7423 OF 1980

WITH
CIVIL APPLICATION NO.190 OF 2015
IN
APPEAL FROM ORDER NO.149 OF 2015
IN
NOTICE OF MOTION NO.2488 OF 2013
IN
SUIT NO.7423 OF 1980

Abu Sufiyan R. Shaikh & Ors.

...Appellants

V/s.

St.Nishat Ara & Ors.

...Respondents

Mr.Girish Godbole i/b Mr.Girish Agarwal for the Appellants.

Mr.S.M. Gorwadkar, Senior Counsel with Mr.A. Daver i/b Mr.A.N. Nesarikar for the Respondent Nos.1-(b)(a)to 1-(b)(d),1-c to 1-e.

CORAM : R.D. DHANUKA, J.

DATE : 16TH NOVEMBER, 2015.

P.C. :-

1. By this appeal the appellants have impugned the order passed by the learned trial Judge in the notice of motion thereby appointing the Court Receiver in respect of the suit property. The suit is filed in the year 1980 and is stated to be part heard by the learned

trial Judge. By a separate order passed in Appeal from Order No.998 of 2014, this Court has already directed the learned trial Judge to hear the suit within six months after disposal of the chamber summons filed by one of the parties. In my view, the learned trial Judge thus at this stage ought not to have passed any order for appointment of the Court Receiver in the suit of 1980.

2. The apprehension however, of the original defendants is that various tenancies are alleged to have been transferred by the original plaintiffs during the pendency of the said suit and if the Court Receiver is not appointed, no property would be left for disposal and/or distribution among the parties. There is no dispute that an injunction order is already passed by the learned trial Judge from creating any third party rights against the parties. None of the parties shall create any third party rights in respect of the suit property during the pendency of the suit. It is also made clear that the tenancies which are transferred by the parties, if any, during the pendency of the suit shall be subject to the final outcome of the suit.

3. In view of the fact that the suit is already partly heard, the impugned order passed by the learned trial Judge appointing the Court Receiver deserves to be set aside.

4. I therefore, pass the following order :-

a). The impugned order dated 11th December, 2014 modified

by the order dated 19th January, 2015 appointing the Court Receiver is set aside with aforesaid directions.

b). The learned trial Judge is directed to dispose of the suit expeditiously as already ordered in the Appeal From Order No.998 of 2014.

c). All the tenancies transferred by the parties shall be subject to the final outcome of the suit.

5. The appeal from order is disposed of in aforesaid terms.

6. In view of disposal of the appeal from order, the civil application does not survive and is disposed of. No order as to costs.

(R.D. DHANUKA, J.)