

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

APPEAL FROM ORDER NO.628 OF 2014
WITH
CIVIL APPLICATION NO.756 OF 2014

Mr. Maujilal Hublal Kanojia & Ors. ... Appellants
V/s.
Mr. Buddhuram Ramcharan Kanojia (Dhobi) & Ors. ... Respondents

Mr. M. A. Adenwala for the Appellant.
Ms. Meena K. Sangoi for the Respondents.

CORAM: K.K. TATED, J.
DATED : JANUARY 27, 2015

P.C. :

1. Heard the learned counsel for the parties. This Appeal from Order is preferred by the original Defendant challenging the order dated 20/06/2014 passed by the Bombay City Civil Court in Notice of Motion No.2003/2014 in Short Cause Suit NO.1032/2014 restraining the Appellant by way of temporary injunction from causing any obstruction to the possession of the Respondent original Plaintiffs over the suit premises.
2. The Appellants are original Defendants and the Respondents are original Plaintiffs.
3. The Plaintiffs filed Special Civil Suit No.1032/2014 in the court of Bombay City Civil Court for an order of injunction restraining the Defendants, their family members from causing obstruction in respect of their possession over the suit premises i.e. room No.21/38, 1st floor, Sahir Amar Shaikh Marg, Dhobi Ghat, Satrasta, Mumbai – 400 011.

4. The Plaintiffs, in their plaint, specifically stated that they are in possession of the suit premises jointly with Defendants. Paragraph 2 and 23 of the plaint read thus:

“2. The Plaintiffs state that the room is admeasuring about 10 x 20 feet and there is one loft inside the room and the Plaintiffs are residing on the floor and the Defendants are using the loft and there is one common open bathroom (i.e. mory) in the said room 1which is commonly used by the Plaintiffs and the Defendants. Hereto annexed and marked as Exhibit - “C” colly are the photographs of the suit premises.

23. The Plaintiffs state that the Plaintiffs have rights, title and interest in the suit premises right from 1962 or thereabouts. The Plaintiffs state that the Plaintiffs have got a genuine, lawful and settled possession of the suit premises along with the Defendants in respect of the suit premises. However, the Plaintiffs strongly apprehends that the Defendants may take the law into their own hands and may forcibly dispossess the Plaintiffs from the suit premises on the instigation of their relatives and/or with the help of some unknown person/s.”

5. In support of their case, the Plaintiffs relied on several documents like ration card, rent receipts, ID card issued by the Employees State Insurance Corporation, dependent card, family cards and postal and other correspondence, bank pass book, PAN card etc.

6. Whereas, the Appellants original Defendants also relied on ration card, PAN card, driving license to show that they are in possession of the suit premises. On the basis of these documents, the learned counsel for the Defendants submits that the Defendants are in exclusive use and occupation of the suit premises.

7. It is to be noted that the Trial Court specifically recorded in paragraph 6 of the impugned order that the Plaintiffs placed on record enormous documents such as ration card, ID card issued by the ESIC, voters' list, record of AADHAR, ration card, PAN card, driving license and other documents. The Trial Court, on the basis of these documents held that the Plaintiffs proved their joint possession in respect of the suit premises with the Defendants. The Trial Court, in paragraph 5 of the impugned order held that the Defendants failed to produce any document to show that they are in exclusive possession of the suit premises.

8. It is to be noted that whether the Defendants are in exclusive use and occupation of the suit premises or not, that can be decided at the time of final hearing of suit after recording evidence. At present, the Trial Court, on the basis of the documents on record with well reasoned order held that the Plaintiffs and Defendants are also in joint possession of the suit premises.

9. Considering these facts and the documents on record, I find no reason to entertain the present Appeal from Order. Hence same is rejected.

10. In view of rejection of the Appeal from Order, nothing survives in the Civil Application. Same stands dismissed as infructuous.

11. Considering the facts and circumstances of the case, hearing of the Short Cause Suit NO.1032/2014 is expedited.

12. At this stage, the learned counsel for the Defendants made an oral request to continue the status-quo granted by this court.

13. Considering the facts and circumstances of the case and the documents on record produced by the Plaintiffs, I find no reason to continue the status-quo granted by this court. Hence, oral request is rejected.

(K.K. TATED, J.)