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

**APPEAL FROM ORDER NO. 1060 OF 2015  
WITH  
CIVIL APPLICATION NO. 1302 OF 2015  
ALONG WITH  
APPEAL FROM ORDER NO. 1061 OF 2015  
WITH  
CIVIL APPLICATION NO. 1303 OF 2015**

Mohammed Majeed Haitula, Ghani ...Appellant

Vs.

Hakikulla Haitulla & Anr. ...Respondents

Mr. Viral K. Rathod for the Appellant

Mr. Suresh Mahadev Jadhav for Respondent Nos. 1 & 2

**CORAM : MRS. ROSHAN DALVI, J.**

**DATED : 16<sup>TH</sup> SEPTEMBER, 2015**

**P.C. :**

Rule. Returnable forthwith.

1. The appellant has challenged the order of the Bombay City Civil Court in notice of motion taken out in the suit filed by the appellant dismissing the notice of motion. The order shows that the plaintiff should prove his exclusive possession, but the Court has seen the joint possession of the defendants as well. The Court has considered that the defendants cannot be dispossessed and an order for protection of possession of plaintiff may result in the defendants suffering irreparable

loss.

2. The plaintiff has produced documents showing his name as mentioned in the title of the plaint. The plaintiff claims that the name was changed as reflected in gazette notification dated 20<sup>th</sup> October, 1997. The old name of the plaintiff is shown to be Hajibulla Haitullah. The defendants claim that there was a family settlement and under the family settlement four brothers were allowed to carry on business year to year. The plaintiff is shown to be one of the four brothers in the family settlement. His old name is mentioned as item No.4 amongst the names of the four sons as party of the third part.
3. The plaintiff has produced certain documents in his new name. The defendants have also produced certain documents in their name. The plaintiff's school leaving certificate is in his old name. The plaintiff's son's birth certificate shows the new name of the plaintiff. The other documents which have been issued thereafter being the electricity bill, ration card, bank passbook etc., are in the new name of the plaintiff.
4. Consequently it is seen that both the parties have produced their documents. This would be if both of them are in possession. Interestingly the plaintiff has produced one electricity bill of 2014. The defendants have produced one

electricity bill of August, 2015.

5. Upon the case of the family settlement it is seen that the four brothers would have been carrying on business from year to year. If that was so the four brothers would have documents, such as the electricity bills which would be issued from month to month, for specified periods. All these aspects would have to be considered in the trial when all the bills in possession of each of the brothers would be produced.
6. The other brother of the parties have filed another suit in the Bombay City Civil Court being Suit No. 2700 of 2011. It relates to the same suit premises. It is between the same parties. It will have to be tried together with this suit. The plaintiff claims that he has not joined that other brother in his suit because he has not threatened to dispossess the plaintiff, but only the two brothers who are defendants in the suit have threatened the plaintiff. This would itself show that the brothers would claim possession in rotation.
7. The plaintiff challenges the defendants' rights under the family settlement. The plaintiff claims that all the brothers may carry on business at all times as they are in joint possession. The plaintiff claims to be in exclusive possession of the suit shop as averred in para 2 of the plaint. The learned Judge has rightly held that the plaintiff has not

shown his exclusive possession. Hence the protection of the plaintiff's possession in the suit premises would result in precisely the same result which is contemplated by the learned Judge.

8. The plaintiff now concedes that the defendants are in joint possession. The plaintiff has not shown the source of the joint possession. The defendants have shown the source of their joint possession and that is the family settlement relied upon in para 4 of the affidavit-in-reply filed by the defendants in the trial Court. Since the plaintiff has not accepted the family settlement, oral evidence is required to see whether the plaintiff would succeed in showing his exclusive possession and from what period of time including the source of such possession showing how the plaintiff acquired the suit property exclusively himself or to see whether the case of the defendants of joint possession in rotation from year to year upon the settlement between the real original owner of the suit premises, who is their uncle who is shown in the family settlement, is true.

9. After ascertaining the documents produced by the plaintiff as also the defendants including the family settlement it is seen that the order of the learned Judge is correct. The plaintiff cannot be granted an order of protection of his possession whilst he claims to be in exclusive

possession. The plaintiff also cannot be granted any protection to continue indefinitely and continuously in the suit premises pending the suit and pending the trial.

10. Since the suit in which the impugned order is passed being Suit No. 757 of 2015 filed by the plaintiff and the other suit being Suit No. 2700 of 2011 which is filed by the brother of the parties in the suit relate to the same subject matter and are in respect of the same premises and between the same parties, both the suits are required to be tried together. Parties may apply for tagging the two suits together in the trial Court. Until that time and until the trial in the plaintiff's Suit No. 755 of 2015 commences, the impugned order shall stand.

11. The original documents produced by both the parties are returned to them.

12. Appeal and civil application are disposed off accordingly.

**(ROSHAN DALVI, J.)**

**CERTIFICATE**

**Certified to be true and correct copy of the original signed  
Judgment /order.**