

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

WRIT PETITION NO.8308 OF 2013

Mr. Nadim-Uz-Zafar-Husan Shaikh

.. Petitioner

Versus

Mr. Kalim-Uz-Zafar Husan Shaikh

.. Respondent

Mr. J. R. Shaikh, for the Petitioner.

Ms. Lalita H. Panchakshari, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 07th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 04.07.2013 passed by the Learned District Judge-4, Pune, by which order the Appeal filed by the Respondent herein came to be allowed and resultantly, the order dated 13.09.2012 allowing the application for temporary injunction Exh.5 came to be set aside.

2. The Petitioner is the original Plaintiff who has filed the suit in question for injunction restraining the Defendant from dispossessing him without following the due process of law. The Petitioner and the Defendant are brothers. The Defendant i.e. the Respondent herein is the elder brother of the Petitioner. The bone of contention is 5 Ares of land on

which there is a structure, wherein the business of motor parts in the name of M/s. Bharat Automobiles is being carried out. It is the case of the Defendant that on his return from the Gulf he has purchased the said 5 Ares of land and since the Plaintiff i.e. the Petitioner herein was his younger brother and therefore, with a view to see to his well being that the Defendant permitted the Plaintiff to join him in the said business as an assistant.

3. Per contra, it is the case of the Plaintiff that he has contributed 75% of the amount of the consideration that was paid for the said land in question. It is further his case that on 17.10.1994 the Defendant executed a Hiba in his favour and thereafter filed affidavit of evidence of the said execution of the Hiba. The Plaintiff therefore prayed that the Defendant should be enjoined from evicting him without following due process of law as presently he is in possession of the suit property. The Trial Court considered the said Application Exh.5 and has by its order dated 13.09.2012 allowed the said application. The Trial Court as can be seen from the order in terms has observed that the Plaintiff is in permissive possession but would have to be dispossessed by following the due process of law and has therefore enjoined the Defendant from evicting the Plaintiff pending the suit except by following the due process of law.

4. The Defendant aggrieved by the said order dated 13.09.2012 passed by the Trial Court granting injunction to the extent mentioned herein above filed Misc. Civil Appeal No.465 of 2012. The Lower Appellate Court on a re-appreciation of the material on record came to a conclusion that since the Plaintiff was brought in as an assistant by the Defendant who is his brother he was only permitted to enter the premises in question and therefore the Defendant being the true owner could not be enjoined. The Lower Appellate Court observed that the claim of the Plaintiff based on the alleged oral Hiba would have to be considered at the trial of the suit and could not be accepted at the interim stage. The Lower Appellate Court was of the view that since the possession of the Plaintiff was at the highest along with the Defendant, the Defendant being the true owner could not be restrained from entering the suit premises. The Lower Appellate Court has therefore for the reasons which find place in the impugned order has upset the order passed by the Trial Court granting injunction.

5. The Learned Counsel for the Petitioner Mr. J. R. Shaikh sought to reiterate the case of the Petitioner/original Defendant in the Trial Court and would contend that since the Plaintiff was admittedly in possession, the said possession could only be taken by following due process of law. In my view, the Lower Appellate Court has upset the order passed by the Trial

Court for cogent reasons as it is well settled that no injunction can be granted against the true owner. Hence, the order passed by the Lower Appellate Court does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

6. Needless to state that the observations made in the instant order are only for considering the application for temporary injunction. The suit would undoubtedly be tried on its own merits and in accordance with law.

[R.M. SAVANT, J]

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