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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.31890 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.31891 OF 2015

WITH

APPEAL FROM ORDER (STAMP) NO.31893 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.31895 OF 2015

Mohamad Arif Modan & Anr.
V/s.
Khodamorad Sarosh

...Appellants

...Respondent

Mr.Yuvraj Patil for the Appellants.

Mr.Mayur Khandeparkar i/b Mr.Khan Javed Akhtar for the
Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 27TH NOVEMBER, 2015.

P.C. :-

1. Both the appeals from order are filed by the original defendants *inter-alia* impugning orders passed by the learned trial Judge allowing the notice of motion filed by the respondent to the appeals from order (original plaintiff) under section 6 of the Specific Relief Act.

2. It was the case of the original plaintiff that in respect of both these structures in question, the plaintiff was in exclusive use

and occupation of the suit property whereas the defendants (appellants herein) have dispossessed the original plaintiff forcibly. In the two notices of motion filed by the plaintiff, the plaintiff had applied for appointment of the Court Receiver in respect of both the suit properties and for appointing the plaintiff as an agent of the Court Receiver and also applied for injunction.

3. The defendants had opposed the said notices of motion. In the affidavit in reply filed before the trial Court, it was the case of the appellants (original defendants) that the wife of the defendant no.1 was forcibly dispossessed from the suit property with the help of one police inspector against whom criminal complaint is pending before the Criminal Court. The defendants also filed the suit in the Small Causes Court some time in the month of December, 2013 being RAD Suit No.358 of 2012 *inter-alia* for a declaration of the tenancy rights and also for mandatory injunction. The defendant no.2 applied for injunction against the plaintiff from inducting into and/or parting with and/or from dispossession of suit property.

4. Learned counsel for the appellants applied for ad-interim order before this Court without effecting the service upon the respondents thought the caveat was filed by the respondent in the present proceedings. In view of extreme urgency and since the appellant did not disclose about the caveat filed by the respondents to

the appeal, this Court passed the *ad-interim* order in favour of the appellants restraining the Court Receiver from implementing the order passed by the trial Court. The respondent has also now filed the civil application *inter-alia* praying for vacating of the *ad-interim* order passed by this Court on the ground that the respondent was not served with any notice despite of caveat having been filed by the respondent and on various other grounds.

5. Learned counsel for the appellants in both these appeals from order submits that the appellants were in possession of the suit property and have not dispossessed the plaintiffs. He submits that though several documents were handed over to the advocate who was representing the appellants before the trial Court to establish possession of the appellants, except one or two documents the learned advocate did not show the remaining documents before the trial Court which would have demonstrated exclusive possession of the appellants on the date of the alleged dispossession of the property.

6. Mr.Khandeparkar, learned counsel appearing for the respondent invited my attention to some of the documents annexed to the plaint and would submit that the documents now sought to be relied upon by the appellants across the bar were not produced before the trial Court. He submits that it was the case of the

appellants themselves in the affidavit in reply filed before the learned trial Judge that some time in the year 2013 the plaintiff had allegedly dispossessed the appellant no.2 from the suit premises. The appellant no.2 has also filed a suit for declaration of her alleged tenancy rights in the Small Causes Court and has applied for injunction against the plaintiff. He submits that the grounds in the appeal memo would also indicate that the appellants were not in possession of the suit property on the date of the alleged dispossession.

7. Insofar as the additional documents sought to be relied by the learned counsel for the appellants at this stage on the ground that though the said documents were furnished to the advocate, who appeared before the trial Court, the same were not produced before the learned trial Judge is concerned, I am not inclined to accept the submission at this stage. No notice has been issued to the learned advocate to controvert these allegations.

8. A perusal of the affidavit in reply filed by the appellants (original defendants) clearly indicate that it was the case of the appellants that on 8th October, 2013, the plaintiff had alleged to have dispossessed the appellants. The appellants have also filed separate suit for a declaration of the alleged tenancy and have applied for injunction against the plaintiff. Though this Court has repeatedly

asked the learned counsel for the appellants to show from the record as to how the appellants alleged to have come in possession after 8th October, 2013 and were in possession on the date of alleged dispossession, when even according to the appellants, the respondent (original plaintiff) herein had alleged to have dispossessed them but the learned counsel is not able to point out either in the affidavit in reply nor in the appeal memo.

9. A perusal of the order passed by the learned trial Judge *prima-facie* indicates that the learned trial Judge has considered the documents produced by both the parties and have *prima-facie* come to the conclusion that the plaintiff was forcibly dispossessed by the defendants and case for appointment of the Court Receiver and for appointment of the plaintiff as an agent of the Court Receiver was thus made out. I do not find any infirmity in the order passed by the learned trial Judge and in my view in the facts and circumstances of the case, the same was absolutely warranted.

10. Insofar as the conduct of the appellants in applying for ad-interim order before this Court without effecting service of notice upon the respondents though caveat was filed and was served upon the appellants and by suppressing these facts is concerned, in my view the conduct of the appellant is totally objectionable. On the basis of the statement made before this Court by the learned counsel for the

appellants, this Court had stayed the operation of the order passed by the learned trial Judge and had directed the Court Receiver to issue telephonic notice to his representative, who had visited the suit premises for implementing the order passed by the learned trial Judge not to implement the said order.

11. I therefore pass the following order :-

a). Appeal from Order (Stamp) Nos.31890 of 2015 and 31893 of 2015 are devoid of merits and are accordingly dismissed.

b). The Court Receiver is directed to implement the order passed by the learned trial Judge expeditiously.

12. The parties as well as the Court Receiver to act on the authenticated copy of this order.

13. The appellants are directed to file the written statement before the learned trial Court within eight weeks from today.

14. In view of dismissal of both the appeals from order and the directions issued aforesaid, both the above civil applications do not survive and are accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)