

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 61 OF 2016****ALONGWITH****CIVIL APPLICATION NO. 76 OF 2016****IN****APPEAL FROM ORDER NO. 61 OF 2016****Bharatlal Phoolchand Kanojiya****..... Appellant****VERSUS****Nandlal Phoolchand Kanojiya****..... Respondent**

Mr.S.A.Shaikh for the Appellant.

Mr.Bholaprasad S.Shukla for Respondent.

CORAM : R.D. DHANUKA, J.**DATED : 25th JANUARY, 2016****P.C.**

By this appeal from order, the appellant has impugned the order dated 26th November, 2015 passed by the learned trial judge granting interim relief in terms of prayer (a) of the notice of motion filed by the respondent herein (original plaintiff). The appellant (original defendant) and the respondent are real brothers. It is the case of the appellant that the appellant has been in joint use, occupation and possession of the suit premises with the original plaintiff and thus the learned trial judge ought not to have granted injunction in favour of the original plaintiff and against the appellant from dispossessing and/or taking forcible possession and/or disturbing and/or interfering with peaceful possession of the plaintiff in respect of the suit premises without following due process of law.

2. The appeal is opposed by the original plaintiff on the ground that the defendant herein is not in possession of the suit property along with the plaintiff and has been staying separately in a different premises at Bhandup since 2001.

3. A perusal of the impugned order passed by the learned trial judge indicates that the learned trial judge has considered the ration card of the year 2001 which would indicate that the name of the appellant was removed from the ration card as a member of the family and that the electricity meter of the different premises of Bhandup was standing in his name. Learned counsel appearing for the appellant is not in a position to dispute that the name of the appellant was removed from the ration card in the year 2001 and his name is shown in the electricity bill in respect of the premises situated at Bhandup.

4. Though this court has repeatedly called upon the learned counsel for the appellant to produce even a single document to show joint possession of the plaintiff in the suit premises, the learned counsel is unable to produce any document for perusal of this court showing joint possession of his client on the date of the trial court passing impugned order.

5. Admittedly the defendant has not filed any separate suit claiming any substantive right in the suit property. The learned trial judge in my view was justified in passing the impugned order granting interim relief in favour of the plaintiff.

6. In my view the appeal is devoid of merits and is accordingly dismissed. In view of the dismissal of the appeal from order, civil application does not survive and is accordingly dismissed.

7. Mr.Shukla, learned counsel appearing for the respondent states that the respondent will not create any third party rights in respect of the suit property during the pendency of the suit. Statement is accepted.

[R.D. DHANUKA, J.]