

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST) NO. 5214 OF 2016****ALONGWITH****CIVIL APPLICATION (ST) NO. 5215 OF 2016****Phoolchand Hitlal Gupta & Ors.****..... Appellants****VERSUS****Mevalal Hitlal Gupta & Ors.****..... Respondents**

Mr.Ketan Chotani, i/b. Mr.Jagdish Chodankar for the Appellants.

Mr.V.S.Kapse, i/b. Ms.Rita Yadav for Respondent No.1.

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

The papers are allowed to be produced at 03.00 p.m.

2. By this appeal from order, the appellants have impugned the order dated 5th February, 2016 dismissing the notice of motion filed by the appellants (original plaintiffs) and allowing the notice of motion filed by the respondent no.1 (original defendant no.1) and appointing defendant no.1 as an agent of the court receiver in respect of the suit property with reasonable royalty as per rules.

3. This court by an order dated 22nd December, 2015 in the Appeal from Order No. 116 of 2015 filed by the present appellants had passed a consent order. By the said order, this court permitted both the parties to apply before the learned trial judge for their appointment as an agent of the court receiver in respect of the newly allotted tenement by the respondent no.5. This court directed the learned trial judge to dispose off the said application within one month from the date of

completion of the pleadings by both the parties.

4. Pursuant to the said order passed by this court, the learned trial judge has after considering the documents produced by both the parties has taken a prima facie view that the plaintiff has failed to prove possession in respect of the suit property and has taken a further view that the documents produced by the defendant no.1 would show that name of the defendant no.1 was shown in Annexure 2 who was held eligible for getting permanent alternative accommodation in lieu of the old hut. The learned trial judge having come to the conclusion prima facie that on the cut off date, the plaintiffs were not in possession of the old premises, the learned trial judge directed that the defendant no.1 was a fit person for appointment as an agent of the court receiver and has accordingly appointed him as an agent of the court receiver.

5. There is no dispute that the cross examination of the plaintiffs' witness is to start on 9th March, 2016.

6. I do not find any infirmity in the order passed by the learned trial judge. The learned trial judge has imposed condition of payment of reasonable royalty as per rules. Whether the suit property belong to all the parties jointly or not, the said issue will be decided on the conclusion of the trial. Merely because defendant no.1 is appointed as an agent of the court receiver at this stage in respect of the new premises allotted by the developer in lieu of the old premises on the basis of the documents produced by the defendant no.1, in my view, no prejudice can be caused to the plaintiffs at this stage.

7. The defendant no.1 is directed not to take any unnecessary adjournments

before the learned trial judge and shall proceed with the evidence. Both parties are directed to co-operate with each other and with the learned trial judge in expeditious disposal of the suit.

8. The learned trial judge shall make an endeavor to dispose off the suit (S.C.Suit No.371 of 2008) within one year from today.

9. Appeal from order is dismissed. No order as to costs. In view of dismissal of the appeal from order, civil application does not survive and is disposed of.

10. It is made clear that the observations made by the learned trial court in the impugned order and by this court are prima facie. The learned trial judge shall decide the matter on its own merits without being influenced by the observations made by the learned trial judge in the impugned order and by this court in this order.

[R.D. DHANUKA, J.]