

Sequeira

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

APPEAL FROM ORDER NO. 271 OF 2006

Shri.Chaggan Khanderao Matale & ors. ... Appellants

V/s.

Shri Ambadas Dhondiram Dinde & ors. ... Respondents.

Mr.Anilkumar Patil a/w Mr.Pankaj Pandey, for Appellants.

Mr.Sham Walve a/w Mr.Swapnil Walve, for Respondent Nos.1 to 4.

***CORAM : N.M.Jamdar, J.
Friday, 22 July 2016.***

Oral Order :-

The Appellants challenge the Order passed by learned District Judge, Nashik dated 16 January 2006 remanding the proceedings to the learned Civil Judge, Nashik for *de novo* trial.

2. The Appellants filed a Regular Civil Suit No.340 of 1998 in the Court of Civil Judge, Junior Division, Nashik for possession of the suit property. It was the case of the Appellants that the Appellants have purchased the property and the Appellants are in possession of the same. It was their case that the Respondents were trying to disturb their possession and had made certain unauthorised entries in the revenue record. Accordingly the Appellants filed a Suit for injunction. The learned Civil Judge framed issues as regards the legal title and possession of the Appellants in the suit property and

whether the Respondents had obstructed the possession of the Appellants over the suit property. The learned Civil Judge, by Judgment and Decree dated 22 January 2002 granted reliefs prayed for by the Appellants and injuncted the Respondents from obstructing the possession of the Appellants. The Respondents filed Regular Civil Appeal No.96 of 2002 in the District Court, Nashik. The learned District Judge after considering the evidence on record in detail, came to the conclusion that it was necessary to remand the proceedings to the learned Civil Judge for retrial. The learned District Judge by Judgment and Order dated 16 January 2006 allowed the Appeal and remanded the proceedings to the learned Civil Judge.

3. Heard learned counsel for the parties.

4. The learned counsel for the Appellants submitted that in the facts and circumstances of the case, the remand was not necessary and the learned District Judge has in fact, on many of the issues rendered findings in favour of the Appellants. The learned counsel for the Respondents supported the impugned order.

5. I have gone through the decision of both, the learned Civil Judge and the learned District Judge. The Suit was filed for injunction. The learned District Judge has taken note of the various sale deeds and the position of the revenue records. The learned

District Judge after appreciation of evidence came to the conclusion that the Appeal is required to be allowed in favour of the Respondents-Plaintiffs. However, the Respondents -Plaintiffs had made a request at the inception of trial that the proceedings need to be remanded to the trial Court. An issue to that effect was also framed by the learned District Judge. Once the learned District Judge came to the conclusion that the Appeal needs to be allowed in favour of Respondents-Plaintiffs, the Court could have proceeded to do so. However, the learned Judge, keeping in mind the request made by the present Respondents did not pass this order in favour of the present Respondents. In fact by this course of action it is the Respondents who are more aggrieved, as they were directed to go for retrial. The Appeal from Order is pending since the year 2006. The learned District Judge had remanded the proceedings in January 2006. By now the Suit as well as the Appeal would have been disposed of.

6. While admitting the Appeal, this Court had stayed the order passed by the learned District Judge and consequently, the order passed by the learned Civil Judge, i.e. order of injunction has continued. I am therefore of the opinion that no useful purpose will be served by allowing this Appeal from Order and restoring the first Appeal. In the circumstances, appropriate course of action will be to let the learned Civil Judge decide the Suit while continuing the interim order passed in this Appeal till disposal of the Suit. The

Appeal from Order is disposed of. The learned Civil Judge Nashik, will decide the Suit bearing No.340 of 1998 within period of one year from today. All the contentions of the parties are kept open. The position envisaged under the interim order granted on 8 June 2006, the injunction granted by the learned Civil Judge dated 22 January 2002 will continue till the disposal of the Suit as interim injunction. It is made clear that the learned Judge will decide the Suit *de novo* on its own merits without being influenced by the grant and continuation of the interim order by this Court. All contentions of the parties on merits are kept open uninfluenced by the observations made by the learned District Judge, as well as in the present order.

(N.M.Jamdar, J.)