

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1461 OF 2015
IN
FIRST APPEAL NO.563 OF 2015

Nandu Ramshankar Yadav	... Appellant
vs.	
Savalprasad Baburam Yadav	... Respondent

Mr. B.T. Yadav, for the Appellant.
Mr. V.R. Tripathi, for the Respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **26th FEBRUARY, 2016**

P.C.:

. The civil application is moved by the Appellant who is the original Defendant for stay to the operation, execution and implementation of the judgment and order dated 7th February, 2015 passed by the learned Judge, City Civil Court, Mumbai in Short Cause Suit No. 2133 of 2009 pending Appeal.

2. The Respondent/original Plaintiff had filed a suit for perpetual injunction restraining the Defendant from causing obstruction and interference including ingress and egress of the Hut

No. 34 situated at Darukhana, Mazgaon, Mumbai. The learned Judge decreed the suit in favour of the Plaintiff/Respondent. Being aggrieved by the said judgment and order, the learned counsel for the Appellant submits that he has filed this Appeal challenging the impugned judgment and order passed in Suit No. 2133 of 2009. He submitted that he is exclusively in possession of the suit premises and the original Plaintiff under the garb of order of injunction trying to get the possession of the suit premises. The trial Court has held the suit in favour of the Plaintiff and therefore the Defendant is restrained from causing obstruction and interference including ingress and egress in the suit premises of the Plaintiff. He submits that the original Defendant/Applicant is in possession of the suit premises till today and the Plaintiff was never in possession of the suit premises.

3. The learned counsel for the Respondent/original Plaintiff submits that the Plaintiff's case is of the joint possession of the suit premises and that is believed by the learned trial Judge and after considering the evidence tendered by both the parties, the trial Judge has granted injunction against the Applicant/original Defendant i.e. in favour of the Plaintiff. He submits that the Plaintiff is very much in

possession of the suit premises jointly with the Defendant and therefore no stay can be granted to the impugned judgment and order.

4. Heard submissions of both the learned counsel. Perused the relevant portion of the judgment and order dated 7th February, 2015. The suit No. 2133 of 2009 was filed for injunction against the Defendant. The Plaintiff claims joint possession with the Defendant and Defendant's case is that there is no joint possession but Defendant only is in possession of suit premises and under the garb of order of injunction, he is trying to take possession of the suit premises. It is noticed that the Plaintiff has stated that the cause of action arose on 20th September, 2009 when the Defendant obstructed his ingress and egress in the suit premises. The suit was filed in the year 2009. However, since 2009 there was prayer for interim injunction as prayed in clause (b) of the application. However, the record available discloses that the Plaintiff never asked for interim injunction pending the suit that is nearly for six years.

5. Under such circumstances, I am of the view that the

judgment and order passed on 7th February, 2015 is to be stayed pending Appeal. The implementation, operation and execution of the impugned judgment and order is hereby stayed pending Appeal.

6. Accordingly, Civil Application stands disposed of.

(MRS.MRIDULA BHATKAR, J.)