

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
APPEAL FROM ORDER (st) NO.13445 OF 2016 with
CIVIL APPLICATION (St) NO.13446 of 2016

Vijay B.Jagtap & anr .. Appellant
vs
Sanjay G.More & ors Respondents

Mr.Deepak Natu I.bM/s N.Deepak & Co for Appellant
Mr.D.S.Sabnis for Respondent no.2

CORAM: G.S.KULKARNI, J
DATE: 3RD MAY, 2016

P.C.

Not on Board. Taken on Board.

2. This appeal is preferred by the appellant/original plaintiff challenging the order dated 15th April, 2016 passed by the learned Judge, City Civil Court, at Dindoshi, Borivali Division, Bombay in a draft Notice of motion in L.C.Suit No.673 of 2016. By the impugned order, the learned Judge trial Judge has rejected the prayers of the appellant/plaintiff for ad interim injunctory reliefs as sought in the notice of motion.

3. Heard Mr.Natu learned counsel for the appellants and Mr.Sabnis learned counsel for the respondents. Perused the impugned order. A perusal of the documents as placed on record of

this appeal paper book clearly shows that in respect of the suit premises there was an earlier litigation between the parties. The appellant/plaintiff was facing a decree of eviction of the Small Causes Court, Mumbai which ultimately attained finality in view of the writ petition against the same being rejected by this Court.

4. Learned trial Judge judge has taken into consideration that in order to support the reliefs as prayed for in the Notice of motion so as to claim independent ownership rights in respect of the said property, the appellant has failed to produce any documents in that regard. The reasoning in that regard is contained in paragraph 4 of the order. All documents which were produced by the appellant pertained to room no.14 and not room nos. 65 and 27 the suit premises on which the appellant/plaintiff is asserting his rights.

5. Learned counsel for the respondents submits that conduct of the appellant/plaintiff is also required to be looked into.

He submits that possession of the premises in execution of the decree passed by the Small Causes Court, Mumbai was taken over on 21st August, 2015 and the report of the bailiff is already part of the record of the executing Court. The appellants/plaintiffs are well aware about this situation. However, the appellants had applied to the Court for removing some articles by making an application to that effect. However, in an illegal manner on 16th April, 2016 the appellant in defiance of the decree as passed against him which has attained finality have forcibly taken possession of the premises on 16th April, 2016. All these facts are taken into consideration in an order dated 28th April, 2016 passed by the executing Court. It is submitted that on account of this blatant illegal conduct on the part of the appellants, the respondents were required to make an application to the executing Court for restoration of the possession of the suit premises. The explanation of the appellant as submitted before the executing Court and recorded by the Court in its order dated 28th April, 2016 is required to be noted which reads thus:

“2. The defendant Vijay Baburao Jagtap is present in the Court who submitted that on 15th April, 2016 there was matter

posted before the City Civil Court wherein one order was passed which he thought to be ordered in his favour therefore, he has taken possession of the suit premises.”

6. Considering all these facts, it appears that the appellant/plaintiff is desperate and is resorting to all the means to retain the premises. There is already a decree against the appellants which appears to have been already executed resulting in the possession of suit premises being taken.

7. The suit in question is filed after the appellant/plaintiff has lost in the earlier round of litigation. The prayers in the suit are seeking a declaration that by virtue of the agreement dated 26th February, 1993 the appellant has become owner of the premises. Admittedly the suit is lodged in March 2016. The learned trial judge has taken into consideration all these facts in passing the ad-interim order which clearly indicates that there is no case much less a prima facie case made out for grant of injunctory reliefs.

8. The Appeal from order is devoid of merits and is accordingly rejected, however, with costs of Rs.10,000/- be paid to the respondents within two weeks from today.

9. Civil Application (St) No.13446 of 2016 would also not survive in view of the rejection of the appeal and the same stands rejected.

G.S.KULKARNI, J

Rng

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AOST.13445.16.