

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

Amk

APPEAL FROM ORDER NO. 615 OF 2016

Smt. Manjula Kishanlal Yadav	.. Appellant
Vs.	
M/s. Swastik Associates	.. Respondent

Ms. Yashashri Y. Naik for the Appellant.
Mr. Sanjay Dubey a/w. Mr. Omkar K. Shaikh for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 6th SEPTEMBER, 2016.

P. C. :

1. Admit.
2. Heard learned counsel for the appellant and respondent finally, with their consent, at the stage of admission itself.
3. This appeal is preferred by the original plaintiff challenging the order dated 15.04.2016 passed by the City Civil Court at Dindoshi, Mumbai thereby dismissing Notice of Motion No. 2760 of 2015.
4. The facts of the appeal are in brief that the appellant is in possession of the suit premises as a tenant since the year 1967. According to her contention, the suit premises were taken on lease from one Hareshwar Chougale and to substantiate the same contention, the rent receipts are also produced on record. After the death of original landlord Hareshwar Chougale, his son Hemant Chougale issued rent receipts and those rent receipts along with Ration Card, Election Card, Electricity Bills,

PAN Card, Aadhar Card are produced on record to show that the appellant is in peaceful possession since 1967. According to appellant, respondent herein is having absolutely no concern with the suit premises and she is not having any privity of contract with the respondent.

5. Therefore, as the respondent started disturbing her possession in the suit premises, she filed a suit before the Trial Court seeking reliefs of declaration and injunction restraining the respondent from dispossessing her from the suit premises, without following due process of law. Along with Suit, she has also filed a Notice of Motion seeking the same reliefs.

6. The Trial Court vide its impugned order rejected the said Notice of Motion and hence, the said order of the Trial Court is challenged in this appeal.

7. The submission of the learned counsel for the appellant is that, as the appellant's peaceful possession in the suit premises is proved on the basis of documentary evidence produced on record, the appellant's possession needs to be protected and the Trial Court has committed an error in refusing the said prayer and dismissing the Notice of Motion.

8. However, it is rightly submitted by the learned counsel for the respondent that in the suit itself, the appellant has stated that the respondent herein has already filed a Suit No. 111 of 2013 before the Small Causes Court at Bandra for eviction of the appellant. In the said suit the respondent has clearly claimed his title of the suit premises on the

basis of Deed of Conveyance dated 19.10.2010. The said suit is pending in the Small Causes Court.

9. Therefore, it is apparent that the respondent is following due process of law to dispossess the appellant or to evict the appellant from the possession of the suit premises. In view of the pendency of the said suit, there is absolutely no cause for apprehension on the part of the appellant that she will be dispossessed without following due process of law. Moreover, whether she is having any privity of contract with respondent or not, it will also be decided by the Small Causes Court where the suit is pending. The Trial Court has rightly observed that no case is made out by the appellant even as to the balance of convenience and irreparable loss. Hence, the Trial Court has rightly rejected the appellant's Notice of Motion. The appeal holds no merits, hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]