

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.771 OF 2016

Rajendra Pandurang Satle & Anr. .. Appellants
-Versus-
Pandurant Govind Satle & Ors. .. Respondents

Ms. Shubhangi A. Vaidya for appellants
Mr. Mohit Jadhav for respondent Nos. 1 and 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30th August 2016.

P.C.

1] Admit. Heard the learned Counsel for the appellants and respondents finally at the stage of admission itself with their consent, as the challenge to the impugned order is a very short one.

2] This appeal takes an exception to the order passed by the City Civil Court Mumbai on 17th May 2016 in Notice of Motion No.1757 of 2016 in S.C.Suit No.928 of 2016. By the impugned order, the present appellant No.2 i.e. original defendant No.4 and his family members are directed to quit themselves from the suit premises along with their bags and baggages within three months from the date of passing of the order.

3] The brief facts of the appeal are to the effect that the appellants 1 and 2 are original defendant Nos. 3 and 4. They are brothers inter se and sons of respondent Nos. 1 and 2. Respondent Nos. 1 and 2 had filed this suit against the present appellants contending, inter alia, that they want to reside peacefully in the suit premises, which belong to them. The appellants herein were causing obstruction to their possession. Not only that, they were also raising quarrels and indulging in the threats of physical assault, and causing mental agony to them. Even non cognisable complaints were also filed against the appellants but it was of no use. Hence, it was pleaded inter alia that as the appellants herein are making life of respondents miserable that too at their old age, the appellants may be restrained from causing obstruction to their possession and further they should be directed to remove themselves from the suit premises along with their bags and baggages.

4] The appellants herein appeared in the suit and resisted the notice of motion contending, inter alia, that the respondent Nos. 1 and 2 had filed a suit at the instigation of their daughter who wanted to have share in the property of respondents.

5] As regards the appellant No.1 i.e. original defendant No.3, he contended that he is not residing in the suit premises. Therefore, there

was no question of his quitting the suit premises. As regards the appellant No.2/ original defendant No.4, it was contended by him that he is residing in the suit premises as a licensee and not as a family member of respondent Nos. 1 and 2. He has also raised the contention that the suit was filed by respondent Nos. 1 and 2 at the instigation of their daughter. There was absolutely no cause of action for filing such a suit as he or his family members do not cause any obstruction nor that they have caused or threatened to cause any physical or mental violence. Hence, it was requested that a preliminary issue be framed as to the jurisdiction of the civil court to try the suit and before deciding the Notice of Motion.

6] The trial court heard the learned Counsel for parties and was pleased to find that admittedly the appellant No.1 i.e. original respondent No.3 is not residing in the suit premises but at some other place and in view thereof, the trial court did not grant any relief of interim injunction sofar as the appellant No.1 original defendant No.3 is concerned.

7] As regards the appellant No.2/defendant No.4, the trial court rejected his contention that he was in possession of the suit premises as licensee. The trial court found that he is residing therein as son of respondent Nos. 1 and 2 and in such a situation there is no necessity of

framing any preliminary issue. The trial court also found that as the suit premises belonged to respondent No.1, the appellant No.2 cannot reside therein without the consent of respondent No.1. Further, having regard to the fact that the relations between the respondent Nos. 1 and the present appellant Nos. 2 and 3 being quite strained and there was apprehension of physical danger and mental agony to the respondent Nos. 1 and 2 at the hands of present appellant No.2, the trial court held the prima facie case to be proved in favour of the respondent Nos.1 and 2. The trial court further held that the respondent Nos. 1 and 2 would suffer irreparable loss and hardship if relief of interim mandatory injunction as prayed for by the respondents is not granted. The trial court further held that balance of convenience lies in favour of respondent Nos. 1 and 2. Accordingly, the trial court allowed the notice of motion against the appellant No.2, thereby directing the appellant No.2 to quit the suit premises along with his family members and bag and baggages within three months from the date of passing of the order.

8] This order of the trial court is challenged in this appeal from order by the learned Counsel for the appellants submitting that in the first place that the trial court has not framed preliminary issue about its jurisdiction to try the suit and proceeded to hear the Notice of Motion. On this ground the impugned order is required to be quashed and set aside.

9] Secondly it is submitted that at the interim stage itself, the trial court has granted relief of interim mandatory injunction thereby directing appellant No.2 to quit the suit premises along with his family members and thus as good as decreed the suit.

10] It is submitted by learned Counsel for the appellant while challenging the impugned order of the trial court that relief of interim mandatory injunction can be granted in very rare cases, only when a strong prima facie case is made out, which is not done by the present respondents. Hence, it is urged that the impugned order of the trial court on this count also is required to be set aside.

11] Lastly it is submitted that the appellant No.2 has no other shelter and he will come on the street if he is asked to quit the suit premises that too along with his family. Therefore, irreparable loss will cause to him and his family. Hence, the balance of convenience lies in favour of the appellant No.2. As a corollary thereto, it is submitted that whatever allegations of the nuisance or harassment are made in the plaint and the notice of motion against him, are made at the instigation of the daughter of respondent No.1 and 2 and they are not yet proved or substantiated.

12] Per contra, learned Counsel for the respondent Nos. 1 and 2 has supported the order of the trial court by submitting that the suit premises are owned by the respondent No.1. There is no question of appellant No.2 being licensee of the said premises and hence, the trial court has rightly rejected the prayer of appellant No.2 to frame preliminary issue of jurisdiction. Further, the learned Counsel for the respondents had by placing reliance on the averments made in para 9 of the plaint, pointed out that the present appellant has made life of respondents so miserable that there is every apprehension of danger to their life, in addition to the fact that they are also suffering from mental agony, to which they are subjected to. A submission is also advanced to the effect that when the things have gone to the extent of lodging N.Cs. by father against the son, then, there was every reason for the trial court to call upon the appellant – son to quit the suit premises. It is urged that at this stage in their life the respondents want to lead a peaceful life and they are at liberty and are justified in doing so, considering the conduct of the appellant No.2, who is major, having his own source of income and, therefore, can very well afford to take alternate premises for his residence. Therefore, according to the learned Counsel for respondent No.1 and 2, there is no question of the appellant No.2 suffering any loss or hardship.

13] Having considered the submissions advanced by the learned

Counsel for the appellant and respondent No.1, it has to be observed that this is a very sorry state of affairs that the respondents – parents have to approach this Court at the late stage in their life seeking relief against their own son for quitting the premises in which they are residing. It is pertinent to note that the age of respondent Nos. 1 and 2 is stated to be 70 and 74 years respectively. Admittedly, the suit premises belong to the respondent No.1 and owned by him. Though a contention is raised by the appellant No.2 that he is in possession of the suit premises as a licensee, this plea itself is without any substance and without there being any document worth the name to that effect. Occupation of son in premises owned by his father cannot become occupation of licensee. His occupation is only and can only be as a member of the family. The family member, like a son who is major can occupy the premises owned by his father, only during and until the consent of the father. Here in the case, therefore, the plea raised by the appellant No.2 that he is a licensee and, therefore the trial court should not have decided the notice of motion without deciding this preliminary issue cannot be accepted. If at all any proposition of law is required to be referred for this purpose, then, one can place reliance on the observations made by this Court in the case of Conrad Dias Vs. Joseph Dias (First Appeal No.826 of 1994 – decided on 26th October 1994), wherein it was categorically held that when the suit is filed by father against the son for injunction, who is member of the family,

then, such a suit is not covered by Section 41 of the Presidency Small Causes Court Act. Thus, if the allegations in the plaint are read as a whole this is not a suit by a landlord against a tenant or a licensor against a licensee. This is a suit between an owner of a property against a member of his family who is none other than his son. To such a suit section 41 of the Presidency Small Cause Courts Act is not attracted. Needless to state that for deciding the jurisdiction of the court, the averments in the plaint are to be looked into and in the present case, the averments are clear to the effect that respondent No.1 is claiming himself to be the owner of the suit premises and seeking relief of injunction against his family member – the son, who is causing obstruction to his possession. Moreover, this is not a suit for recovery of possession. Therefore, as held in the aforesaid authority, section 41 of the Presidency Small Causes Court Act cannot and does not apply to such a suit.

14] Learned Counsel for the respondents has also relied upon the decision of Delhi High Court in the case of Harish Chand Tandon Vs. Darpan Tandon and Anr., in CS(OS) 1738 of 2013 dated 23rd September 2015, wherein in para 15 it was held that an adult son or daughter has no legal right to occupy the self acquired property of the parents or parents in law, as the case may be, against their consent and wishes.

15] In the instant case, no independent status is claimed by the appellant No.2, so as to remain in possession of the suit premises. In such a situation, if his position in the suit premises is that of a son of respondent No.1 and prima facie the averments made in the plaint supported with the N.C. complaints make it clear that the appellant No.2 has made life of respondent Nos. 1 and 2 miserable, then, it goes without saying that the appellant No.2 and his family members cannot foist themselves on respondent No.1 and 2 against their consent and desire, especially causing nuisance and harassment to them.

16] In this view of the matter, it is needless to state that the trial court has rightly granted relief of interim mandatory injunction directing the appellant No.2 to quit from the suit premises along with his family members, bags and baggages. It is true that the relief of interim mandatory injunction is to be granted in a rare case and only when strong prima facie case is made out. Here, the facts of the present case reveal that a strong prima facie case lies in favour of respondent Nos. 1 and 2 who are parents and at a late stage of their life being 70 and 74 years old respectively. They are perfectly justified in ensuring that they can lead peaceful life without being physically and/or mentally harassed by their own son. The appellant No.2 is admittedly a major son having his own source of income and, therefore, in a position to arrange premises for his

residence. Hardship, if any, which he will suffer is comparatively far less than the hardship and inconvenience which is being caused to respondent Nos. 1 and 2. Therefore, this being a fit case where the trial court has exercised its discretion in granting equitable relief of interim mandatory injunction, no interference is warranted in the exercise of that discretion within the limited jurisdiction of this Court. Appeal therefore holds no merit and hence dismissed.

17] At this stage a prayer is made to grant a period of one month for the appellants to vacate the premises. However, considering the facts of the case, no case is made out for grant of stay of order. Oral application to that effect disposed of.

(Judge)