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

APPEAL FROM ORDER NO. 719 OF 2013

with

CIVIL APPLICATION NO. 864 OF 2013

Mahammad Akil Gulamali Somji and Ors. ...Appellants/Applicants.

V/s.

Sadruddin Mangalji Khoja & Anr.

... Respondents.

Mr. Amit Borkar for the Appellants/Applicants.

Mr. Amey Deshpande i/b. J.D. Khairnar for Respondent 1.

CORAM : N.M. Jamdar, J.

28 July, 2016.

Oral Order :-

The Appellants challenges the Judgment and Order passed by the Civil Judge, Senior Division, Pune (Small Cause Court) dated 6 September 2012 granting application filed by the Respondent – Plaintiff for temporary injunction.

2. Heard learned Counsel for the parties.

3. A Suit is filed by the Respondent – Plaintiff for a declaration that the gift deed is not binding on the Plaintiff and to

restrain the Appellants from causing obstruction to the possession of the Respondent – Plaintiff to the suit land. In this Suit an application for temporary injunction was taken out which has been granted by the impugned order. The learned Counsel for the Appellant submitted that the learned Judge has recorded a finding that the Respondent – Plaintiff is not in exclusive possession of the suit property yet injunction has been granted. This submission cannot be accepted. It is not even the case of the Respondent – Plaintiff that he is in exclusive possession of the entire property. What the learned Judge has found that both the parties are in joint possession of the suit property and since the Appellant was obstructing the possession of the Respondent, he needs to be protected. Once a prima-facie finding is recorded that both the parties are in joint possession, one party cannot be permitted to not allow the other from enjoying the property. The impugned order is passed in the year 2012 and is in operation for last almost four years.

4. In the circumstances, it will not be appropriate to disturb the arrangement which is in operation for period of four years. It is open to the parties to make a request for early disposal of the Suit. Keeping all contentions of the parties open on merits, the Appeal from Order is disposed of. Civil Application is disposed of accordingly.

(N.M. Jamdar, J.)