

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3935 OF 2016
in
FIRST APPEAL NO.1156 OF 2014 WITH
CIVIL APPLICATION NO.2191/2014,2998/2015,
4141/2015,

Mrs Asha Jadhav & ors Applicants
vs
Shrikant Jadhav & ors.. .. Respondents

Mr. A.P.Kanduri for Applicant/Appellant
Mr.Kini I.b Mr.Suresh Dubey for Respondent no.1

CORAM: G.S.KULKARNI, J
DATE: 30 NOVEMBER 2016

P.C.

1. Not on Board. Taken on Board on a praecipe moved on behalf of the Applicants.

2. By this application, the applicants/original appellants have prayed for the following reliefs:

- a) "Applicants be allowed to withdraw the present First Appeal No.1156 of 2014 with respect to suit premises admeasuring 280 sq.ft with liberty to file application before the Executing Court for restoration of possession of area in excess of the suit premises;
- b) Applicants be allowed to withdraw the amount of Twenty lacs being one third share of the Applicants in respect of suit property deposited by the Respondents in the Executing Court;
- c) Ad interim stay granted by this Court be continued with respect to Room no.A,B and C till the said application is heard by the Executing Court."

3. However, as regards prayer clause (b) learned counsel

for the applicant states that the applicant is not pressing this prayer and the amount may remain deposited with the City Civil Court, Mumbai.

4. As regards prayer clause (a) though the prayers are for allowing the applicants to withdraw the present First Appeal in respect of suit premises admeasuring 280 sq.ft with liberty to file an application before the executing Court for restoration of possession of the area in excess of the suit premises, learned counsel for the applicant states that the applicants be permitted not to press this prayer except that the applicants/appellants be permitted to approach the executing Court to file an application for restoration of the possession of the area which are not the suit premises or an area which according to the applicant is in excess of the suit premises. There appears to be a dispute as to the description of the suit premises in regard to the actual area in respect of which reliefs were prayed for in the suit.

5. Considering the nature of the above submissions, which would require fact finding before the appropriate executing Court, it would be appropriate and in the interest of justice that the applicants/appellants are permitted to file an application before the Executing Court seeking restoration of possession of the area the

applicant claims to be in excess of the suit premises.

6. As regards prayer clause (c) as the appeal is admitted and issues are required to be decided by the executing Court, on the application as would be made on behalf of the applicants/appellant, the parties are directed to maintain status quo in respect of the suit premises.

7. Liberty to the parties to file necessary application as and when proposed application to be made by the applicants is decided by the executing Court.

Civil Application is accordingly disposed of. No costs.

{G.S.KULKARNI, J}

Rng

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