

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3940 OF 2016
IN
FIRST APPEAL NO.1410 OF 2016

Mrs. Shakuntala Ramanand Bhat
& Others

.... Applicants

Vs.

Smt. Leela Krishnamurti Bhat &
3 Others

.... Respondents

Mr. Siddharth C. Wakankar for the Applicants/
Appellants.

Mr. Drupad Patil for the Respondents.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : NOVEMBER 15, 2016

P.C:

1. We have heard both sides on the civil application for interim relief.

2. The Suit of the appellants/plaintiffs has been dismissed.

3. The request is that there was an ad-interim order in force and passed by this Court. That be continued till the hearing and final disposal of the appeal.

4. The argument of the applicants/appellants' counsel is that the interim order operating during the Suit was challenged by an Appeal From Order by the respondents/defendants, but that Appeal From Order also was dismissed. In such circumstances and given the vulnerability of the Judgment of the Trial Court, this Court should restrain the respondents from creating any third party rights or transferring the Suit property in any manner during the pendency of the first appeal.

5. On the other hand, the respondents' counsel would submit that the Suit of the appellants/plaintiffs has been dismissed. A Gift Deed executed on 29-7-1966 was challenged in a Suit filed in the year 2013. Secondly, even if the Gift Deed cannot be said to be acted upon, yet, the defence of the respondents that they are owners by adverse possession has

been accepted. In such circumstances, unless and until the Judgment and Decree of the Trial Court is set aside, no interim order can be passed as that would amount to allowing the appeal itself.

6. We have noted this contention and we find that in the civil application all that is alleged is that the property is valuable. That property, in the City of Pune, is sought to be usurped by the respondents/defendants and that is how the Suit was brought. We find that Special Civil Suit No.355 of 2013 questions the acts of the year 1966 and thereafter. Today, we cannot proceed on the footing that the appellants would necessarily succeed in the first appeal. Therefore, until and unless we arrive at a conclusion that the findings of the Trial Court on the point of adverse possession are perverse, we would not be justified in passing any restraint order. All that can be directed is that in the event the respondents desire to transfer or otherwise dispose of this immoveable property, they should inform the purchasers of the pendency of the first appeal and all such acts of the respondents shall abide by the outcome of the

appeal. No equities can be claimed by the parties at the hearing of the appeal. With this clarification, this civil application for interim relief is dismissed.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)