

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 127 OF 2016
WITH
CIVIL APPLICATION NO.169 OF 2016**

Shitalprasad Ramdevar Yadav & Ors.

..Appellants

Vs.

Lourdes @ Luda Gonsalves & Ors

..Respondents

Mr. P. J. Thorat the Appellants

**Mr. Milan Desai a/w Mr. M. I. Charolia i/b Mr. T. R. Patel for the
Respondent Nos.1 to 3**

CORAM : R. M. SAVANT, J.

DATE : 28th JUNE, 2016

P.C.

1 The above Appeal From Order challenges the order dated 10-8-2015 passed by the Learned Judge of the City Civil Court, Bombay, by which order ad-interim relief in terms of prayer clauses (a) and (b) of the draft Notice of Motion came to be granted. The said prayer clauses (a) and (b) of the draft Notice of Motion read thus:

(a) that this Hon'ble court be pleased to pass temporary order and injunction thereby temporary restrained the Defendants, their servants, agents and/or any persons acting and/or claiming on their behalf from entering into any sort of agreement, documents, deed, writing in favour of any third party in any manner whatsoever in respect of the suit property viz Survey No.117, Hissa No.26, CTS No.3389 admeasuring 987.6 sq.meters lying being and situated in the Revenue Village Malwani, Taluka-

Borivali, Mumbai Suburban District, Malad, (west) Mumbai 400062, and/or from creating any further third party, right, title and interest in the suit property in any manner whatsoever.

(b) that this Hon'ble court be pleased to pass temporary order and injunction thereby temporary restrained the Defendants, their servants, agents and/or any persons acting and/or claiming on their behalf from entering into abd.or remaining upon the suit property and/or portion thereof viz Survey No.117, Hissa No.26, CTS No.3389 admeasuring 987.6 sq.meters lying being and situated in the Revenue Village Malwani, Taluka-Borivali, Mumbai Suburban District, Malad, (west) Mumbai 400062, and/or disturbing the plaintiffs' peaceful use, occupation and possession in respect of the suit property and/or from putting any ort of construction upon the open portion of the suit property as shown in greed sketch line in city survey plan being Exhibit A annexed hereto without following the due process of law.

2 The challenge in the above Appeal From Order is restricted to the grant of the ad-interim relief in terms of prayer clause (b) of the draft Notice of Motion. It is the submission of the Learned Counsel appearing on behalf of the Appellants that having regard to the finding recorded in paragraph 10 of the impugned order wherein the Learned Judge of the City Civil Court has on the basis of the documents placed on record by the Defendants has observed that the Defendants are residing in the suit property, the Trial Court has erred in granting the reliefs by way of prayer clause (b) wherein one of the prayers is that the Defendants should be restrained from entering upon the suit

property. The recording made in the impugned order in paragraph (10) is to the following effect:

“After perusal of documents filed by defendants on record like Rationing Card, N. A. Order, Election Card, PAN Card, Electricity Bills issued by BSES Ltd. and Reliance Energy, Shop License issued by BMC, Taxes paid by defendants to BMC and complaint lodged by one Suryanath Sharma against Laxmishankar Yadav and others. Admittedly, it can be said that defendants have been residing in the suit property and they are having their houses in the suit property and they are not owners of the suit property.”

3 Since the challenge in the above Appeal From Order is limited to the grant of ad-interim relief in terms of prayer clause (b), in my view, having regard to the finding recorded by the Learned Judge which has been extracted hereinabove, it would be just and proper to modify the impugned order dated 10-8-2015 to the extent of deleting prayer clause (b) from the operative part of the said order. Hence the ad-interim relief i.e. granted to the Plaintiffs would be only in terms of prayer clause (a). The natural corollary to the said prayer clause (a) would be an order restraining the Appellants / Defendants from putting up any sort of construction upon the open portion of the suit property.

Hence the ad-interim relief would be in terms of prayer clause (a) and the Appellants / Defendants are also restrained from putting up any construction upon the open portion of the suit property.

4 Both the Learned Counsel are agreeable to the above order operating as interim relief pending the Suit and the Notice of Motion being disposed of in terms of the above order. Hence the above order would operate pending the Suit and the Notice of Motion would accordingly stand disposed of. The Plaintiffs to get the Notice of Motion registered if not already registered, expeditiously. The Appeal From Order is accordingly disposed of.

5 In view of the disposal of the above Appeal From Order, the Civil Application No.169 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]