

Sequeira

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

APPEAL FROM ORDER NO. 1378 OF 2013

Mr.Suresh Madhavrao Kharade ... Appellant
V/s.
Mr.Isaq Allauddin Nadaf ... Respondent.

None for the Appellant.
Ms Geeta Mulekar, for the Respondent.

***Coram : N.M. Jamdar, J.
Thursday 23 June, 2016.***

P.C. :-

The Appellant challenges the order passed by the learned Civil Judge Senior Division, Solapur dated 16 July 2013 allowing the Application filed by the Respondent / Plaintiff for temporary injunction. The injunction sought was to restrain the Appellant / Defendant from obstructing the peaceful possession of the Respondent and not to create third party rights.

2. The Special Civil Suit No.6 of 2013 was filed by the Respondent seeking specific performance of an agreement dated 9 August 2012. According to the Respondent consideration of rupees eighteen lakhs was fixed out of which rupees five lakhs were paid, so also stamp duty of substantial amount. According to the Respondent

specific performance of the agreement was sought however was denied. Therefore, the Suit had to be filed. In this Suit an application for temporary injunction was taken out. The learned Civil Judge found prima facie case in favour of the Respondent. The learned Civil Judge found that, prima facie, an amount of rupees five lakhs is paid, and that the Respondent was in possession of the property. Accordingly, by the impugned order dated 16 July 2013, the Appellant was restrained from obstructing possession, of the Respondent / Plaintiff, and was enjoined from creating any third party rights.

3. None appears for the Appellant. The Appeal is notified on board a week in advance. I have heard learned counsel for the Respondent.

4. By the order dated 21 December 2013 this Court has directed that the parties should maintain status-quo as on today. On 29 January 2014, the Appeal was admitted and thereafter has come up on Board. Adequate note of hearing is given. The suit for specific performance is pending. The learned trial Judge has prima facie found that the Agreement was in existence and substantial amount is paid. It is the contention of the Respondent that in the Agreement itself it is mentioned that Respondent is put in possession. This Court by order dated 21 December 2013, after hearing both the sides

has directed the parties to maintain status-quo. This position has continued for almost three years without any breach of peace or disturbance. The learned counsel for the Respondent has no objection for continuation of status-quo. It would be therefore, appropriate that the same position is continued till the disposal of the Suit. Accordingly, Appeal from Order is disposed of by directing that the order passed by this Court on 21 December 2013 directing the parties to maintain status-quo, which is inclusive of injunction is continued till the disposal of the Suit. All contentions of the parties on the merits of the Suit are kept open. It is open to the parties to make a request to the learned Civil Judge, for early disposal of the Suit.

(N.M. Jamdar, J.)