

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.75 OF 2016
WITH
CAA/96/2015**

Anil Pandurang Bhosale & Ors. ... Appellants

Vs.

Shri Subhash V. Jagdale ... Respondent

Mr.Chetan G. Patil for the Appellants
Mr.Drupad Patil for Respondent

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 18th FEBRUARY, 2016

P.C.:

1. This appeal is directed against the order dated 27.10.2015 passed by the District Judge, Kolhapur in dismissing the application at exhibit 5 in RCA No.270 of 2015. The appellant had filed a suit for injunction simpliciter against the respondents, who are the defendants and the suit was dismissed with costs on 30.6.2015 by the learned Civil Judge, Junior Division, Panhala against which the appeal No.91 of 2006 was filed by the plaintiffs and in the said appeal, the application at exhibit 7 for interim injunction was filed. The said application was dismissed. Hence, this appeal.

2. Both the appellants and the respondent claimed their right in the suit property and that they are in possession of the suit house at Panhala

through their grandmother Sakhubai. The plaintiffs are from the branch of the son of Sakhubai and defendants are from the branch of the daughter of Sakhubai. Both the learned Counsel for the parties have relied on a number of documents before the trial Court and after going through the documents, the trial Court held that the plaintiffs have failed to prove their exclusive possession and dismissed the suit. The learned Counsel for the appellants i.e., the plaintiffs, has pointed out that he has moved the application for interim stay under Order 13 (1)(2) of the CPC and it was allowed on 18.7.2006. The appeal filed against the said order was dismissed on 27.4.2007 by the District Court and the said order was not challenged further at interim stage and thus, the said order is in force till the dismissal of the appeal. Thereafter, in appeal, the said order continued till the application below exhibit 7 was dismissed on 27.10.2015. Thereafter, the present appeal was preferred and this Court has passed the order of status quo on 5.1.2016. The learned Counsel for the appellants has submitted that the appellate Court, while considering the case of the appellants, did not consider the documents which were produced before the trial Court and subsequently held that as the trial Court has dismissed the suit, the applicant has no prima facie case on merits.

3. Per contra, the learned Counsel for the respondent i.e., the original defendant, has submitted that the respondent claimed co-ownership in the

property being the legal representatives of Sakhubai and no injunction can be granted against the co-owner. It is further argued that the respondent has produced number of documents showing that he is in possession of the suit premises and those documents are relied and discussed in the judgment of the trial Court. He submitted that once a finding is given on merit by the trial Court in respect of possession of the suit premises in favour of the respondent, then, even prima facie, the case on merit tilts on the side of the respondents. He submitted that the electricity meter and water supply meter stands in his name and his name is appearing on the suit premises which is considered by the trial Court and therefore the order passed by the appellate Court is to be maintained.

4. Perused the documents placed before me. There are many documents exhibited before the trial Court as produced by both the parties showing their claim over the suit property. The electricity bills are produced by both the parties. It is true that the order of dismissal of the suit is in favour of the respondent and the appreciation made by the learned trial Judge has the same weightage at this prima facie stage of appeal. However, the fact that the said order is challenged by way of First Appeal and during the pendency of the suit, the interim order was in favour of the plaintiffs and running against the respondent since 18.7.2006 cannot be overlooked at all. Generally, when there is an injunction at an interim stage and continued throughout the trial till the decision of the suit and

also continued in appeal, I do not find any urgency to disturb the said order. In the present case, it is necessary to go into the documents in detail as all these documents are exhibited before the trial Court and proper assessment of these documents to decide the point of possession between the parties, is required.

5. In view of this, at this stage, I am of the view that the order of status quo will be proper to meet the ends of justice. Hence, I pass the following order:

- i) The appeal is partly allowed.
- ii) The parties are directed to maintain status quo as on today till the hearing of the appeal;
- iii) The appellate Court to endeavour to decide the appeal on merits on or before 30.6.2017.

6. Appeal from order is disposed of accordingly.

7. In view of the disposal of the appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)