

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

APPEAL FROM ORDER NO. 24 OF 2017

GANGARAM BHANUDAS MACHE
VERSUS
ASHRU MALHARI PAWAR

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Advocate for Appellant : Mr. Rajendra S. Deshmukh, i/b Mr. R. B. Ade.

Advocate for Respondent : Mr. Vinayak Sudhakar Bedre.

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CORAM : **V. K. JADHAV, J.**

DATE : 21st March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the order below Exhibit – 7 dated 4th March, 2016 passed by the District Judge-1, Ahmednagar in Regular Civil Appeal No.484 of 2015, the Appellant / original Plaintiff before the lower Appellate Court has preferred this appeal from order.

3 Brief facts giving rise to the present appeal from order are as follows:

The Appellant / original Plaintiff had instituted Regular Civil Suit No.220 of 2000 for decree of perpetual injunction in respect of the suit property described in paras 1A and 1B of the plaint. Both the properties are landed properties. The learned Civil Judge Senior Division, Shrigonda vide its judgment and decree dated 16th

November, 2015 in Regular Civil Suit No.220 of 2000 partly decreed the suit with costs and thereby restrained the present Respondent / original Defendant from obstructing the Plaintiff's possession over the suit property as described in para 1A of the plaint. However, rest of the reliefs claimed by the Plaintiff stand rejected. Being aggrieved by the same, the original Plaintiff has preferred Regular Civil Appeal No.484 of 2015 and pending appeal, filed an application Exhibit – 7 for issuance of temporary injunction in respect of the property as described in para 1B of the plaint. The learned District Judge-1 vide its impugned order below Exhibit – 7 rejected the said application for temporary injunction. Hence, this appeal from order.

4 The learned counsel for Appellant / original Plaintiff submits that in para 53 of the judgment, the Trial Court has observed that though the Plaintiff found in possession of the suit property described in para 1B of the plaint, certainly possession of the Plaintiff over the said suit property is not at all legal. The learned counsel submits that Appellant / original Plaintiff has a strong hope of success in pending appeal before the District Court and his possession, may be legal or illegal one, if not protected during the pendency of the appeal, the Appellant / Plaintiff would face the irreparable loss. The learned counsel submits that pending suit, initially, *ex-parte* ad-interim

temporary injunction was granted by the Trial Court in respect of both the suit properties, however, the same came to be vacated after hearing the Defendant by a final order. Being dissatisfied with the said order, the Plaintiff filed a miscellaneous appeal before the District Court and during pendency of the said miscellaneous appeal before the District Court, all throughout, the *status-quo* order was operating. Even though the said appeal came to be dismissed, during the pendency of the revision, the order of *status-quo* was operating. In Writ Petition No.968 of 2003, this Court has also directed the parties to maintain the *status-quo* till the suit is decided by the Trial Court expeditiously as directed. The learned counsel submits that during the pendency of the appeal before the lower Appellate Court, the parties may be directed atleast to maintain the *status-quo* in respect of the property as described in para 1B of the plaint.

5 The learned counsel for the Respondent submits that the Trial Court during the course of scrutinizing the evidence on record, observed that even if the Plaintiff found in possession of the property mentioned in para 1B of the plaint, it cannot be said that his possession over the suit property is legal one. The learned counsel has not disputed the direction to maintain the *status-quo* during the pendency of the miscellaneous appeal, revision and the writ petition

before this Court. However, the learned counsel submits that the Trial Court has disposed of the suit on 16th November, 2015 and thereafter, the learned District Judge has rejected the application Exhibit – 7 on 4th March, 2016. This appeal is now heard in the month of March 2017. The learned counsel submits that there is no point in directing the parties to maintain the *status-quo*. The learned counsel submits that instead of directing the parties to maintain the *status-quo*, the lower Appellate Court may be directed to dispose of the appeal expeditiously preferably within three months.

6 In view of the above submissions, without touching to the merits of the case, the parties are hereby directed to maintain the *status-quo* in respect of the suit property described in para 1B of the plaint as on today till the disposal of the appeal and the lower Appellate Court is hereby directed to dispose of the said appeal as expeditiously as possible preferably within a period of three months from the date of this order. All points kept open. Appeal from order is accordingly disposed of.

[V. K. JADHAV, J.]