

Sequeira

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

CONTEMPT PETITION NO.266 OF 2015

Mr.Subhash Dhondu Joshi

(since deceased through
legal heirs)

1 a. Smt.Suhani Subhash Joshi
and others.

.. Petitioners

Vs

Shri Jairam Nhanu Joshi

(since deceased through
legal heirs)

1 a. Smt.Prabhavati Jairam Joshi
- (since deceased through
legal heirs)

1 b. Shri Shivraram Jairam Joshi
and others.

.. Respondents

Mr.Rakesh Pathak i/b Khandeparkar & Associates, for Petitioners.

Ms.Swati Sawant a/w Ms.Leena Sawant, for Respondents.

Coram : N.M.Jamdar, J.

Date : 30 March 2017.

P.C. :

By this Contempt petition, the Petitioners have sought an action against the Respondents under the Contempt of Courts Act, 1971 and Article 215 of Constitution of India.

2. According to the Petitioners, the Respondent No.1(b) has breached the order dated 5 August 2005 directing the parties to maintain status-quo. The learned counsel for Petitioners have made a grievance that the Respondent No.1(b) is not permitting Petitioners to access the house property and also preventing from repairing the house as well as clearing the overgrown branches of trees.

3. The Respondent is the original Plaintiff. The suit filed by the Respondents for injunction was dismissed. The Appeal filed by the Respondent was allowed on 18 December 2004 and Petitioners were restrained by order of perpetual injunction from obstructing or interfering with the possession of the Respondents over the suit property.

4. By order dated 5 August 2005, in the second Appeal this Court opined that there is no question of any blanket stay. Only order passed was a direction to the parties to maintain status-quo. Therefore, there is no stay to the order of injunction which is granted by Appellate Court in favour of the Respondent No.1(b). There is however a liberty to the Petitioner to have right of access to their house property, pending appeal. The learned counsel for Respondents submitted that the Respondent has not obstructed the Petitioners from having access to their property and will not do so. The Respondent No.1(b) will file an affidavit to that effect within period of two weeks. If the affidavit is not filed within period of two

weeks, strict view of the matter will be taken.

5. As far as the other grievance of the Petitioners regarding not allowing the Petitioners to remove the trees and replace the tiles is concerned, since the Second Appeal is pending it is open to the Petitioners to take out appropriate Civil Application in that regard, which will be considered on its own merits. This Contempt Petition is accordingly disposed of.

6. If the undertaking is not filed within period of two weeks, liberty to the Petitioners to revive the Contempt petition.

(N.M.Jamdar, J.)