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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 9908 OF 2017
WITH
CIVIL APPLICATION ST NO. 9909 OF 2017

Prabhakar Menka Shetty	...Appellant
<i>Versus</i>	
Oommen Michael & Ors	...Respondents

Mr Prasad S Dani, Senior Advocate, i/b Sanket Mungle, for the
Appellant.
Mr Kishor V Tembe, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 10th July 2017

PC:-

1. The Appeal is directed against an order dated 21st March 2017 declining ad-interim relief. The Plaintiff is in fact agreeable to having the Notice of Motion heard. The difficulty is the second part of the order, which directs parties to lead evidence on Affidavit for enquiry under Section 8 of the Bombay Court Fees Act 1959.

2. There is a previous order of RG Ketkar J in Writ Petition No. 1172 of 2015. That Writ Petition was directed against an order of 17th October 2015 passed by the Trial Court in this very Suit. The order directed an enquiry under Section 8 of the Bombay Court

Fees Act 1959. The Trial Court was at liberty to decide the application for ad-interim relief.

3. In view of this, the present order is not one that will serve the purpose. While the enquiry under Section 8 may proceed, the Notice of Motion must be heard. The reason is plain. The Suit does not seek a declaration at all. It has only two prayers. The first is for permanent injunction in respect of certain property. The second is for an interim injunction in respect of that very property.

4. Thus, it would be unjust if the Notice of Motion for interim relief was deferred and, in the meantime, the Defendants were left to carry on construction or to continue in possession and creating third party rights in respect of the property. This of course does not mean and is not intended to mean or to be an assessment of the Plaintiffs' case or a finding in favour of the Plaintiffs. All that it means is that the Plaintiffs' application must be fully heard and decided and the application for interim relief cannot and should not be allowed to be defeated only on account of the pendency of an enquiry under Section 8 of the Bombay Court Fees Act 1959.

5. The Trial Court will hear and decide the Plaintiffs' Notice of Motion at the earliest possible. The enquiry under Section 8 will continue in parallel.

6. The Appeal from Order is disposed of in these terms with no order as to costs.

7. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)