

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6455 OF 2016

Mr.Kalim Khalil Kaji Chilmai .. Petitioner

Vs.

Mr.Shreeman Education Trust Ltd and anr. .. Respondents

Mr.V. V. Salunkhe, for the Petitioner.

Mr.Jai Kanade i/b Ms.Ulka Saranjame and Mr.Atharva Dandekar,
for Respondent No.1.

CORAM : M.S.KARNIK, J.
02nd FEBRUARY, 2017

P.C. :

. The petitioner - original plaintiff had filed a Suit for declaration and injunction that he is the owner in respect of the suit property. The application below Exhibit 14 for temporary injunction was filed in said Suit restraining the defendants from disturbing the possession over the suit property and that defendants should not create any third party rights there of. The said application for temporary injunction came to be rejected by the trial Court by a reasoned order on 17/03/2015. The petitioner – plaintiff did not choose to challenge the said

order before the higher forum. Thereafter, as the defendants started with the construction activity, the petitioner filed another application below Exhibit 68 on 11/02/2016. Learned trial Judge by order dated 23/02/2016 was pleased to reject the said application primarily on the ground that earlier application for temporary injunction is already rejected and there is no change in the circumstances to consider this application.

2. Misc. Civil Appeal filed against the order dated 23/02/2016 passed below Exhibit 68 came to be rejected by the Appellate Court on 21/04/2016. This is the order impugned in the present Petition.

3. Learned Counsel for the petitioner submits that during the pendency of this Petition, he filed application for amendment for bringing some subsequent events on record regarding the construction on the suit property and said application for amendment came to be allowed. However, the controversy in this Petition is restricted to the challenge to the

order dated 21/04/2016 passed by the Appellate Court.

4. In view of the fact that the earlier order rejecting the temporary injunction on 17/03/2015 was not challenged by the petitioner, the Courts below in my opinion were justified in coming to the conclusion that the subsequent application for temporary injunction deserves to be rejected as there is no change in the circumstances.

5. Learned Counsel for the petitioner, however, submits that he may be granted liberty to move appropriate application before the trial Court in view of the fact that the application for amendment is now allowed for bringing some subsequent facts on record. Needless to mention that if appropriate application is made, the same shall be dealt with by the learned trial Court in accordance with law. All the contentions of the parties including the issue of maintainability to file such application is kept open. Subject to the above, the Writ Petition is dismissed.

(M.S.KARNIK, J.)