

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 14816 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 14817 OF 2017

Alambee wd/o Mohammed Ismail Shaikh & Ors	...Appellants
<i>Versus</i>	
Mohd Ibrahim Ismail Shaikh & Ors	...Respondents

Mr Omkar K Shaikh, *for the Appellants.*
Mr Kuddus Haviulla, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 21st June 2017

PC:-

1. The appeal is directed against an order dated 5th May 2017 declining the plaintiffs ad-interim relief. Before the trial court, the plaintiff in a suit for declaration, possession and injunction, sought an interim restraint against the 1st and 2nd defendants from creating any third party interest in the property. At that time it was pointed out that the defendants had in their own Suit No. 2295 of 2015 obtained an interim injunction against these very plaintiffs who were out of possession and residing elsewhere. The plaintiffs do not seem to have challenged the order of injunction passed against them in the defendants' suit. The learned judge found that the order in the

defendants' suit had been passed almost a year and half earlier and had remained without challenge.

2. It is today contended before me that that order had lapsed since it was operative only until a given date. That is hardly a reason to grant the kind of injunction that the plaintiffs sought. The fact remains that the defendants' suit was prior in point of time and all that the trial court did, in my view absolutely correctly, was to give time to the defendants to file a reply while declining ad-interim relief.

3. There is no reason to interfere with the order under appeal. The appeal is dismissed. The civil application does not survive and is disposed of accordingly.

4. The motion will be decided on its own merits uninfluenced by the order on the application for ad-interim relief. The parties will appear before the trial court on 3rd July 2017 and obtain directions for filings of replies and rejoinders and fixing a date for final hearing of the motion.

(G. S. PATEL, J.)