

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 501 OF 2017
WITH
CIVIL APPLICATION NO. 642 OF 2017

Jaya Menekar Suvarna	...Appellant
<i>Versus</i>	
Ratna Madhav Suvarna & Anr	...Respondents

Mr RP Ojha, for the Appellant/Applicant.

CORAM: G.S. PATEL, J
DATED: 31st July 2017

PC:-

1. This is thoroughly misconceived appeal. When the plaintiff came to the Court with a prayer to protect possession, the defendant filed a motion seeking a mandatory order against the plaintiff to make payment of various amounts as repair charges, arrears of maintenance charges, and also sought a restraint against the plaintiff from creating third party rights. This was on the allegation that the plaintiff was a trespasser. The defendants themselves filed no suit either for recovery of these amounts, for regaining possession or for an injunction.

2. The Trial Court while balancing equities granted an injunction against the plaintiff from creating third party rights but quite correctly refused to pass any mandatory order directing the plaintiff to make any payment.

3. In appeal it is argued that there are no reasons why the plaintiffs should not have required to make payment of arrears or maintenance charges. The appellant is wrong. Indeed there are reasons. These reasons suggest themselves. That type of relief cannot be granted except in aid of a further relief. The defendant has not filed any legal proceeding consequentially and no question arises of granting such a mandatory relief against the plaintiff.

4. All that is required is to preserve the parties in *status quo* pending the suit; and that is precisely what the Learned Judge has done.

5. There is absolutely no reason to interfere with the order under appeal which is of 20th June 2017, and which disposed of the defendant's notice of motion.

6. The appeal is dismissed with no order as to costs. The civil application does not survive and it is disposed of as infructuous.

(G. S. PATEL, J)