

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1035 OF 2015
WITH
CIVIL APPLICATION NO. 1268 OF 2015

Hausila Biresar Kewat .. Appellant
vs.
Sandeep Rajaram Kewat & Anr. .. Respondents

Mr. Rahul Pande i/b. Mr. O. A. Pande for Appellant.
Mr. Rajendra Singh S. for Respondents.

CORAM : M. S. SONAK, J.
DATE: 01 FEBRUARY 2017

P.C :

1] This appeal is directed against order dated 9 July 2015 made by City Civil Court at Dindoshi rejecting appellant's / plaintiff's notice of motion in the suit. Mr. Pande, learned counsel for the appellant submits that the appellant had produced material on record establishing that it is the appellant who was in possession of the suit premises, may be, along with the respondents who were permitted to stay in the suit premises only as a gratuitous licensees, since, they are near relatives. Learned trial Judge has not considered this material and therefore the impugned order warrants interference. Mr. Pande has further submitted that learned trial Judge has misconstrued the statements made by the appellant in the affidavit in rejoinder. In the affidavit in rejoinder all that was stated was that the respondents (original defendants) were

permitted to stay in the suit premises as a gratuitous licensees and they have refused to vacate. Mr. Pande submits that this is quite consistent with the case of the appellant that the respondents were permitted to stay in the suit premises along with the appellant.

2] Mr. Rajendra Singh for the respondents submits that the suit premises belong to the father of the respondents and there is material produced on record to establish this fact. Mr. Rajendra Singh submits that from the averments in the affidavit in rejoinder as also the police complaints, it is quite clear that the appellant is not in possession of the suit premises and therefore, the appellant would never have claimed the relief as applied for in the notice of motion. Mr. Singh submits that in any case, the suit has proceeded for trial and at this stage, there is no case made out for interfering with the impugned order. At the highest, the trial may be expedited.

3] The case now projected by Mr. Pande, has not been so clearly projected in the pleadings, including in particular, the affidavit in rejoinder and the police complaints which are referred to in the affidavit in rejoinder. In such circumstances, it cannot be said that the trial Court has committed any error of principle or that there is any serious perversity in the approach of the learned trial Judge. Further, the trial in the suit has already commenced. At this stage, therefore, it will not be appropriate to interfere with the impugned

order. However, it will be appropriate to direct even the respondent to maintain *status quo* in respect of the suit premises, in the sense, that the respondents shall not sell, transfer or create any third party rights in respect of the suit premises.

4] The suit may be disposed of as expeditiously as possible and in any case within a period of one year from the date of production of authenticated copy of this order. In disposing of the suit, the trial court need not be influenced by any observations in the impugned order or for that matter the present order. All contentions of all parties are kept open for determination by the learned trial Judge.

5] The appeal is disposed of in the aforesaid terms. There shall be no order as to costs. In view of disposal of the appeal, civil application does not survive and is disposed of accordingly.

6] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)