

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.867 OF 2014

Shri.Rajkumar Raghunath Gupta ..Appellant

V/s.

Shri.Kanhaiyalal Raghunath Gupta ..Respondent

Mr.Pankaj Dubey i/by Mr.Ditendra Mishra for the
Appellant/Applicant.

CORAM : M. S. SONAK, J.

DATE : 20 JANUARY 2017.

P.C.

1. Heard Mr.Pankaj Dubey for the appellant. Neither the respondent nor his advocate are present though this matter has been duly notified on the cause list.

2. This appeal is directed against order dated 05 August 2014 made by the City Civil Court, Mumbai dismissing the appellants Notice of Motion No.2881 of 2013. By this Notice of Motion, the appellant had sought for protection of his joint possession in the suit premises along with the respondent, who is his elder brother. This Court, on 23-11-2015, admitted this appeal and continued the ad-interim reliefs in the suit during the pendency of

the appeal. The order dated 23-11-2015 reads thus :-

“1. Admit. None appeared for the respondent.

2. By this appeal the appellant has impugned the order dated 05th August, 2014 passed by the learned trial Judge, dismissing the notice of motion filed by the appellant (Original plaintiff) inter-alia praying for injunction against the respondent from dispossessing the plaintiff and/or removing the articles belonging to the plaintiff in the suit premises forcibly without due process of law.

3. A perusal of the impugned order passed by the learned trial Judge prima-facie indicates that the plaintiff was in joint possession of the suit premises with the defendant. The learned trial Judge however, has rejected the notice of motion merely on the ground that the plaintiff was unable to show any documents relating to his alleged title in the suit premises.

4. During the pendency of the appeal from order, there was ad-interim reliefs in terms of prayer clause (b) of the civil application the same to continue during the pendency of this appeal.

5. It is made clear that this Court has not stayed the proceedings of the trial Court and thus the trial Court shall proceed with the hearing of the suit if the same is

ready.

6. *The Civil application is disposed of in aforesaid terms. No order as to costs.*

7. *The appeal from order can be heard in due course.”*

3. The record indicates that notice of the admission of this appeal has been duly served upon the respondent. However, neither the respondent nor any advocate representing him are present today.

4. From the order dated 23-11-2015 it is clear that the appellant has ad-interim protection, at least since the year 2013, which is the year in which the suit was instituted. The suit itself, is of the year 2013 and therefore, it is presumed that the progress therein is considerable. In any case, it is clear that the appellant has protective relief in his favour since 2013. At this stage, there is really no case made out to disturb such relief.

5. The impugned order itself records that the appellant had produced documents like Ration Card and Voting Card. These documents, which include the name of the appellant at least *prima-*

facie suggest that the appellant continues to reside in the suit premises along with his elder brother. In such circumstances, relief could not have been denied to the appellant on the basis that the appellant was only 12 years old when he came to reside with his brother in the suit premises. Respondent, in any case, is not entitled to take law in his own hands and forcibly dispossess the appellant or to prevent the appellant from continue to resist in the suit premises. At least *prima-facie*, the appellant had been residing in the suit house for the considerable period no doubt, along with his brother. This is not a case seeking any injunction against the co-owner as observed by the learned Trial Judge in the impugned order. The relief applied for by the appellant was basically to protect to his own possession, which, it was his case, was being disturbed or threatened by the respondent otherwise then by the due process of law.

6. For all the aforesaid reasons the impugned order is set aside. The ad-interim relief which was granted by the Trial Court and which was continued by this Court order dated 23 November 2015 is hereby confirmed. Such relief shall operate during the pendency of the suit.

7. However, it is clarified that the observations in the impugned order, order dated 23 November 2015 or for that matter the present order shall not influence the Trial Court in deciding the suit on its own merits and in accordance with law. With the clarification as aforesaid this appeal is allowed. There shall be no order as to costs.

8. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)