

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

APPEAL FROM ORDER NO.991 OF 2012

Mr.Virendra Prasad Basdev Yadav
and Others

..Appellants

V/s.

Mr.Ramshray Amardev Yadav

..Respondent

Mr.Madhav Jamdar for the Appellant.
None for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 05 JANUARY 2017.

P.C.

1. Heard Mr.Jamdar for the appellant. Challenge in this appeal is to the order dated 14-09-2012 by which the City Civil Court, Greater Bombay (Trial Court) has enjoined the appellants from dispossessing the respondent and his family members from the suit house until the final disposal of the suit.

2. Though, the appeal was admitted, this Court, by order dated 12 March 2013 declined interim relief to the appellant, by observing thus :-

“1. The Civil Application has been filed by the

Applicants for stay to the order dated 14th September 2012. Heard Shri.Jamdar the learned counsel appearing on behalf of the Applicants and Smt.Puranik, the learned counsel appearing on behalf of the Respondent.

2. Shri.Jamdar, the learned counsel appearing for the Applicants submits that there is no material to show that at the time of filing of suit or immediately prior to filing of the suit the Respondent/Plaintiff was in possession. He further submits that since the Appeal is admitted, it is necessary that the impugned order should be stayed.

3. Smt. Puranik, the learned counsel appearing on behalf of the Respondent, on the contrary, submits that the learned Trial Court on perusal of the material placed on record has come to the conclusion that the Plaintiff/Respondent is in possession, and therefore, granted injunction as prayed for.

4. The learned Trial Court upon prima facie consideration of the material has come to the finding that the Respondent/Plaintiff was residing in the suit premises, and has therefore granted injunction restraining the Defendants from dispossessing the Plaintiff and his family from suit house till decision of the suit.

5. The correctness or otherwise of the order would be examined only at the stage of hearing of the Appeal. If the order of injunction is stayed at this stage, it would, amount to allowing Appeal without hearing parties. In that view of the matter, I am not inclined to grant prayer as prayed in the application. The application is rejected.”

3. Mr.Jamdar learned counsel for the appellant submits that the Respondents are the cousins of the appellant. The tenancy in respect of the suit premises was admittedly in the name of the Basdev Yadav, the father of the appellants. The rent receipts are also in the name of Basdev Yadav. Mr.Jamdar also points out that the respondent's case as set out in the plaint is that they are in joint occupation in the suit premises along with the appellants. Mr.Jamdar submits that this case is incorrect and at some time in the past, respondents were merely permitted to stay in the suit premises for some time as guests of the appellants. On the basis of old documents, which have no relevance to the position as on the date of the institution of the suit, the injunction has been granted. Mr.Jamdar submits that learned Trial Court was required to assess the situation as on the date of the institution of suit. He submits that on the date of institution of the suit, the respondents were is not at all in the possession of the suit premises. In any case Mr.Jamdar submits that there is no question of grant of injunction at the behest of one co-owner as against another co-owner. This is assuming without admitting

that the respondent was at all any co-owner or co-occupant of the suit premises.

4. Mr.Jamdar also pointed out that the appellants had already instituted L.E. Suit No.150/185 of 2013 before the Small Causes Court seeking the eviction of the respondent on the ground that the respondent merely a gratuitous licensee in respect of the suit premises. Mr.Jamdar submits that the gratuitous licensee cannot be armed with an injunction to restrain the title holder from enjoying the suit premises.

5. For all the aforesaid reasons Mr.Jamdar submits that the impugned order is liable to be set aside.

6. The respondent, though served, is not present. The advocate for the respondent is also not present.

7. The impugned order basically refers to documents like ration card as well as other documents produced by the respondents on record. On the basis of such documents, the

learned Trial Judge as held that they prima-facie establish possession in respect of the suit premises. It cannot be said that the learned Trial Judge has erred in principle or that the view taken is vitiated perversity or unreasonableness.

8. Taking into consideration the limited scope of interference against the interlocutory order, there is really no case made out to interfere with the impugned order at this point of time. Besides, the appellants have already instituted L.E. Suit No.150/185 of 2013 in a Small Causes Courts in order to secure the eviction of the respondents on the basis that the respondents have gratuitous licensee in respect of the suit premises. This suit, will have to be decided on its own merits and in accordance with law. Neither the institution of Short Cause Suit No.1471 of 2012, nor the making of the impugned order dated 14-09-2012 or for that matter the dismissal of this appeal can come in the way of Small Causes Court deciding the L.E. Suit No.150/185 of 2013.

9. In fact, upon a meaningful reading of the plaint in

Short Causes Suit No. 1471 of 2012, it is clear that the respondent really seeks for an injunction to restrain the appellants from dispossessing him otherwise than by due process of law. Now that the appellant has already instituted L.E. Suit No.150/185 of 2013, it is expected that such an apprehension may not seriously survive. In any case, this is a matter to be decided at the stage of final disposal of the suit.

10. Suffice to note that there is no case made out to interfere with the impugned order at this stage. The suit was instituted in the year 2012 and it is expected that the same will be disposed of expeditiously. In any case, it is clarified that in case the L.E. Suit No.150/185 of 2013 is decreed and the respondent is ordered to be evicted from the suit premises, the appellant will be entitled to apply to the Trial Court for variation of the impugned order. This is because any decree in L.E. Suit No.150/185 of 2013 will obviously be a significant variation in the circumstances.

11. With the aforesaid observations, the present appeal

is disposed of. There shall be no order as to costs.

12. It is clarified that the none of the observations in the impugned order and the present order shall influence the Trial Court or for that matter the Small Causes Court in disposing of the respective suits. Such suits shall disposed of on their own merits and in accordance with law.

(M. S. SONAK, J.)