

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 30789 OF 2016
WITH
CIVIL APPLICATION (ST.) NO. 30790 OF 2016
IN
APPEAL FROM ORDER (ST.) NO. 30789 OF 2016**

Mr. Tukaram Dhuraji Jagtap

...Appellant

Versus

Mrs. Varsharani Devendra Ballal & Ors.

...Respondents

.....

Mr. Uday P. Warunjikar for the Appellant.

Ms. Lalita H. Panchakshari for Respondent Nos. 1 and 2.

.....

CORAM: MRS.MRIDULA BHATKAR, J.

DATE : DECEMBER 04, 2017

P.C.:

1. This Appeal from Order is directed against the order dated 30th August, 2016 passed by the learned Ad-hoc District Judge-1, Pune thereby rejecting the application below Exhibit 5 in Regular Civil Appeal No. 706 of 2016.

2. The appellant/ plaintiff had filed a Suit No. 1513 of 2012. The said Suit was rejected under Order 7 Rule 11 of the Code of Civil

Procedure,1908 with costs on the ground of res-judicata and, therefore, he had filed Civil Appeal No. 706 of 2016 and prayed for temporary injunction that the respondents, who are original defendant nos. 1 and 2, be restrained from interfering in the peaceful possession of the plaintiff over the suit property. On 16th January, 2017, the learned counsel for respondent nos. 1 and 2 had made statement that the possession of the premises in question was already taken in execution proceedings. Thus, as on today, the appellant is not in possession, but respondent nos. 1 and 2 are in possession of the suit premises.

3. Perused the order dated 30th August, 2016 passed by the learned Ad-hoc District Judge-1, Pune. It was observed by the learned Judge of the trial Court that no document has been produced by the appellant to show factum of possession of the suit premises and, therefore, temporary injunction was refused.

4. A query is made to the learned counsel for the appellant, who argued for the appellant, whether any document was produced before the trial Court disclosing that the appellant was in possession of the suit premises. The answer is 'No'.

5. In view of this, no interference is required in the order dated 30th August, 2016 passed by the learned Ad-hoc District Judge-1, Pune. Hence, Appeal from Order is disposed of.

6. In view of disposal of Appeal from Order, Civil Application does not survive and the same is accordingly disposed of.

7. Mr.Warunjikar, learned counsel for the appellant, submits that interim protection, which was granted in his favour during the pendency of this Appeal from Order is to be continued and the respondents be directed not to create any third party interest in the suit property.

8. Nothing is produced before this Court to show any agreement or any right or any document of previous possession of the appellant in respect of the suit property. Interim protection granted by this Court was only for a limited purpose i.e. pendency of this Appeal. As the Appeal from Order is disposed of, there is no reason to continue the said interim protection.

(MRIDULA BHATKAR, J.)