

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1430 OF 2013

Vijaya Nand Singh	..	Appellant
vs.		
St. Francis Xavier Church & Anr.	..	Respondents

Mr. Anil Mishra for Appellant.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE : 31 MARCH 2017

P.C :

- 1] Heard Mr. Mishra, learned counsel for the appellant.
- 2] On 9 June 2014, this Court, whilst admitting the Appeal, made the following order :

“ Heard learned Counsel for the appellant.

2 Though, the respondents are duly served no one appeared on behalf of them, when the matter called out.

3 This Appeal From Order preferred by original plaintiff challenging the order dated 26.11.2013 passed by Bombay City Civil Court, Dindoshi in Notice of Motion No. 1252 of 2009 in suit No. 1729 of 2009 rejecting the Appellants prayer for injunction.

4 It is the case of appellant that the respondent executed lease deed dated 26.08.1969 in respect of land admeasuring 2630 sq. yards from Survey No. 41 Hissa No.15 situated at Koldongri, Sahar Road, Vile Parle after obtaining permission under Section 36 of Bombay Public Trust Act from Charity Commissioner dated 06.03.1996. He further pointed out that thereafter, the appellant by lease deed dated 26.08.1969 executed sub leased in favour of B.E.S.T. in respect of 904

Sq. Meters land. He further submits that as per lease deed dated 26.08.1969, appellant is in possession of suit property. He further pointed out that though, the Trial Court recorded in paragraph 7 of the impugned order that appellant is in possession of some of the land, failed and neglected to pass interim order in favour of appellant.

6 Considering the lease deed dated 26.08.1969, it prima facie shows that appellant as on today is in possession of 1626 sq. yards. Therefore, Appeal From Order is required to be admitted.

7 Hence, ADMIT."

3] Similarly, on 19 September 2014, this Court, disposed of Civil Application No. 1688 of 2013 in this Appeal directing the parties to maintain *status quo* during the pendency of the Appeal. The order dated 19 September 2014, reads as follows :

“ Heard Mr. A.R.Mishra, learned Counsel for the applicant. None appears for the respondents.

2. Mr.Mishra submitted that by order dated 09/06/2014, appeal was admitted. As far as interim relief is concerned, the earlier interim protection granted by this Court on 21/12/2013 directing the parties to maintain status quo was continued.

3. No reply is filed opposing the application. None appears for the respondents.

4. In view thereof and for the reasons stated in the application, Civil Application is disposed of and ad interim order dated 21/12/2013 directing the parties to maintain status-quo shall remain in force during the pendency of the appeal. Costs in cause.

4] Mr. Mishra, learned counsel for the appellant – plaintiff points out that the appellant has already filed her affidavit in lieu of examination-in-chief. He points out that since, the respondents

herein, who are the defendants in the suit, are not appearing before the learned Trial Judge, the evidence in the matter has been closed and the matter is now posted for final arguments on 17 April 2017.

5] If the aforesaid be the position, this Appeal can be disposed of by directing the parties to maintain *status quo* until the disposal of the suit itself. The parties are accordingly directed to maintain *status quo* during the pendency and final disposal of the suit before the learned Trial Judge. This is in supersession of the order impugned in this Appeal.

6] The Appeal from Order is disposed of in the aforesaid terms. There shall be no order as to costs.

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

(M. S. SONAK, J.)