

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.343 OF 2018
ALONG WITH
CIVIL APPLICATION NO.449 OF 2018

Sudhakar Anna Kamble Appellant-Applicant
V/s.
Dagadu Krishna Kamble and Ors. Respondents

Mr. Ajay A. Joshi for the Appellant-Applicant.

Mr. Sharad V. Kulkarni for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 9TH OCTOBER, 2018.

P.C. :

1. Heard Mr. Joshi, learned counsel for the Appellant-Applicant, and Mr. Kulkarni, learned counsel for Respondent No.1.
2. This Appeal takes an exception to the order dated 20th February 2018, passed by District Judge-1, Pandharpur, thereby rejecting the application filed at 'Exhibit-5' in Regular Civil Appeal No.99 of 2016.
3. The said application (Exhibit-5) and the Regular Civil Appeal was preferred by the Appellants herein, seeking the relief of interim injunction, restraining the Respondents from disturbing their possession in the suit property during pendency of the Appeal.

4. The Suit was filed by the Appellants for a declaration that, the 'Sale Deed' of the suit property, executed in favour of the Respondents, is null and void. During pendency of the said Suit, the application for interim injunction filed by the Appellant was allowed. Thereafter, however, the Suit came to be dismissed by the 'Judgment and Order' dated 25th March 2016.

5. However, even after dismissal of the Suit, the Trial Court has extended the earlier order of interim injunction, which also came to be continued by the first Appellate Court, when the present Appeal was filed. Thereafter, on appearance of Respondent No.1 and considering his submissions and also on perusal of the 'Judgment' of the Trial Court on record, the first Appellate Court has rejected the said application and vacated the order of interim injunction.

6. It is submitted that, against the said order, when this Appeal was preferred against the said order, this Court has again extended the order of interim injunction and now the matter is being heard. In view thereof, at this stage, it is submitted by learned counsel for the Appellant that, as the order of interim injunction passed during the pendency of the Suit is yet in existence and in continuation, despite the dismissal of the Suit, the said order may be continued and hearing of the Appeal may be expedited.

7. However, as rightly pointed out by learned counsel for Respondent No.1, admittedly, the Regular Civil Appeal is of the year 2016 and considering the pendency of the old Appeals before the District Court, the hearing of this Regular Civil Appeal cannot be expedited as such.

8. Moreover, the perusal of the order passed by the first Appellate Court shows that, the first Appellate Court has considered the findings given by the Trial Court on all the issues; especially the two major issues, one in respect of the 'Sale Deed', dated 4th December 2009, which, according to the Appellants, was null and void and the Trial Court has, on the basis of the oral and documentary evidence produced on record before it, accepted the legality and validity of the said 'Sale Deed' and also considered the 'Mutation Entries' (Exhibit-97) and the oral evidence and thereafter held that, apparently Respondent No.1 is in possession of the suit property. In this respect, the Trial Court has also considered the RTS Proceedings filed before the 'Revenue Authorities', wherein also it was revealed that, Respondent No.1 is in possession of the suit property and in view thereof, prima facie, concurring with the findings recorded by the Trial Court in the light of the evidence adduced before it, the first Appellate Court has rejected this order of interim injunction.

9. Considering the above-said facts on record, merely because during

pendency of the Suit, the order of interim injunction was granted, it does not mean that, after the Suit is decided on merits and the findings recorded by the Trial Court are subjudice, the same order of interim injunction should be extended. This Appeal, therefore, holds no merits; hence, stands dismissed.

10. In view of the dismissal of the Appeal, Civil Application No.449 of 2008 pending in the Appeal does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]