

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.23591 OF 2018
ALONG WITH
CIVIL APPLICATION (STAMP) NO.23593 OF 2018

Sujata Kisan Hasabe	 Appellant-Applicant
V/s.	
Amitesh Ramratan Patil	 Respondent

Mr. Vaibhav R. Gaikwad for the Appellant-Applicant.

Ms. Rati S. Sinhasane for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD OCTOBER, 2018.

P.C. :

1. Heard learned counsel for both the parties.

2. This Appeal takes an exception to the order dated 20th June 2018 passed by the District Judge-1, Sangli, thereby allowing 'Application' at 'Exhibit-7' filed in Regular Civil Appeal No.134 of 2018.

3. The said application was filed by the Respondent herein for interim injunction, restraining the Appellant from carrying out any further construction and causing obstruction to the peaceful possession of the Respondent in the suit property. Alternatively, the prayer for

maintaining of status-quo was sought. The first Appellate Court has allowed the said application and thereby restrained the Appellant from carrying out further construction over the suit property and directed to maintain status-quo until further orders.

4. Learned counsel for the Appellant submits that, the Suit filed by the Respondent is already dismissed by the Trial Court, recording a clear finding of fact that, Respondent has failed to prove that the Appellant has made encroachment on the Respondent's property and has also failed to prove that the Appellant has caused any obstruction in peaceful possession of the Respondent. Therefore, the Respondent's Suit for recovery of encroached portion is dismissed. In the light thereof, it is submitted that, 90% of the construction is already completed and at this stage, if the order of status-quo is granted, it is the Appellant, who will suffer irreparable loss and hardship, though already the Suit against him is dismissed.

5. Per contra, learned counsel for the Respondent has pointed out the order passed by this Court directing the parties to maintain status-quo during pendency of the Suit. It is submitted that, the first Appellate Court has only extended the same order of status-quo; especially having regard to the fact that the findings recorded by the Trial Court in respect of appreciation of evidence, are subject to the final outcome of the

Appeal. According to learned counsel for the Respondent, therefore, the first Appellate Court has rightly directed the parties to maintain status-quo; otherwise, the filing of the Suit itself will become infructuous.

6. However, it can be seen that, in the plaint, in addition to seeking the relief of injunction, the Respondent has also sought possession of the encroached portion, after removal of the construction, if any, made thereon. Therefore, there is no question of Suit as such becoming infructuous. If the construction was not at all started and the suit land was vacant, then one would have considered directing the parties to maintain status-quo. However, the photographs produced on record show that, 90% of the construction is already complete and the Appellant merely wants to put up the door and the windows and do the work of outside plaster. To that extent also, if the Appellant is restrained from making requisite construction, it follows that the Appellant is going to suffer irreparable loss, as already the Appellant has invested substantial amount in the said construction. The 'Decree' of the Trial Court is also in his favour. In case the Appeal is decided in favour of the Appellant, the Appellant is ready to remove the said construction and handover vacant and peaceful possession thereof to the Respondent. Appellant is ready to file an undertaking to that effect and legally also such consequence has to follow. Therefore, once the finding of fact, at least at the first level of the lis, is recorded against the Respondent, then,

the earlier order of status-quo, passed by this Court during the pendency of the 'Appeal from Order', cannot be extended just like that, when it is going to cause some hardship and inconvenience to the other party.

7. In view thereof, the Appeal is allowed. The impugned order passed by the first Appellate Court is set aside, subject to condition of the Appellant filing necessary undertaking in the first Appellate Court within a period of two weeks from today stating that, he will handover vacant and peaceful possession of the suit premises to the Respondent, if decision of litigation goes against him.

8. Appeal stands disposed off as allowed in the above terms.

9. In view of the disposal of the Appeal, Civil Application (Stamp) No.23593 of 2018 pending therein, does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]