

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 564 OF 2013
IN
SECOND APPEAL NO. 186 OF 2013

Jahurkhan Sandukkhan Patan & Ors ...Applicants
Versus
Ruksana Sandukkhan Patan ...Respondent

Mr. Pratik Rakhade, i/b Mr. P. N. Joshi, for the Applicants.
Mr. Sachin Gite, for the Respondent.

CORAM: N. M. JAMDAR, J
DATED: 31 JANUARY, 2018

PC:-

1. Heard the learned Counsel for the parties.
2. By order passed today, the Second Appeal is admitted. The Respondent – Plaintiff had filed a suit seeking injunction, which was dismissed by the learned Civil Judge, Junior Division, Niphad, by the judgment and order dated 3 March, 2008. The Appeal filed by the Respondent – Plaintiff was allowed by the learned District Judge, Niphad, by the judgment and order dated 28 November, 2012 and it was directed that the Appellants will not take possession of the suit property without following due process of law.

3. *Prima facie*, the contentions raised by the Applicants are that the learned District Judge has not considered the material on record to come to the conclusion that the Respondent – Plaintiff is in the possession of the property, is not correct. Furthermore, during the pendency of the Appeal, interim relief has been granted in favour of the Appellants, which is operating for some time. An attempt at mediation was also made, but was not successful.

4. On the last occasion, the statement made by the learned Counsel for the Appellants that the Respondent – Plaintiff, who is the real sister of the Appellants, is not interested in these proceedings as she is re-married and no longer resides in the suit premises, was recorded. The matter was adjourned from time to time by the learned Counsel for the Respondent to take instructions. The learned Counsel for the Respondent states that till date the Respondent is not giving him clear instructions. The assertion of the learned Counsel for the Appellants appears to be correct and it is obvious that the Respondent is staying elsewhere. In these circumstances, Civil Application is allowed in terms of prayer clause (a).

[N. M. JAMDAR, J.]