

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1139 OF 2015
WITH
CIVIL APPLICATION NO. 1420 OF 2015
IN
APPEAL FROM ORDER NO. 1139 OF 2015

Sau. Vijaya Jagannath Chede and Ors. .. Appellants
Vs.
Smt. Pushpalata Prakash Deshmukh & Ors. .. Respondents

Mr. Amol Gatne for the Appellants.
Ms. Saima Ansari for Respondent No. 10.
Mr. Rameshwar Gite for Respondent Nos. 1 to 4.
Mr. Uday Nighot for Respondent Nos. 12, 13 and 14.

CORAM : M.S. SONAK, J.

DATE : 13th August 2018.

P.C. :-

- 1) Heard the learned Counsel for the parties.
- 2) The challenge in this appeal is to the order dated 18th April, 2015 by which the learned Trial Judge has declined to grant the appellants-original plaintiffs any interim reliefs.
- 3) Mr. Amol Gatne, the learned Counsel for the appellants submits that the learned Trial Judge has entirely gone by revenue records or some alleged statements made by and on behalf of the appellants before the Revenue Authorities. He points out that the impugned order virtually records certain findings with a conclusive tone

while, in fact, it is settled position in law that at the stage of deciding the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, the Court ought to focus on a prima facie case and not on prima facie title. He submits that relevant documents have also not been considered by the learned Trial Court while passing the impugned order.

4) The learned Counsel for the respondents refuted contentions of Mr Gatne and defends the impugned order. He points out that the statements made by and on behalf of the appellants before the Revenue Authorities were relevant in the context of determining the issue of prima facie case. He also points out that the directions in question have already been complied and even third party rights have been created. He points out that balance of convenience was entirely against the grant of any interim orders in favour of the appellants. For these reasons, the learned Counsel for the respondents submit that this appeal may therefore be dismissed.

5) Rival contentions now fall for my determination.

6) From the perusal of the impugned order as well as the other materials on record, it cannot be said that there is any case made out to warrant interference in the impugned order. This is not a case where reliance has been placed only upon revenue records in order to deny

interim relief to the appellants. Whatever the phraseology of the observations in the impugned order, it is well settled that observations in such interim orders are not at all relevant for deciding the main suit on merits. At that stage, learned Trial Court is expected to decide the suit on the basis of the evidence produced by the parties without in any manner being influenced by any of its observations in the orders made at the stage of deciding application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

7) In any case, it is clarified that the learned Trial Judge shall not, while disposing of the suit on merits, permit itself to be influenced by any of the observations made in the impugned order. Similarly, the learned Trial Judge shall not also be influenced by the fact that this appeal is not being entertained. Even the observations in the present order are prima facie and they need not influence the learned Trial Court while disposing of the suit on merits and in accordance with law.

8) Mr. Gatne points out that the evidence in the present matter stands concluded on 5th October, 2015. If this be so, then it is only appropriate that the suit is disposed of as expeditiously as possible unless, of course, there is any other disability for the progress of the suit.

9) With the aforesaid observations, this appeal is disposed of. There shall be no order as to costs.

10) Pending civil application does not survive and the same is disposed of.

(M.S. SONAK, J.)