

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2217 OF 2017
IN
FIRST APPEAL NO. 850 OF 2017**

Jude D'Souza	...	Appellant
V/s.		
Richard Rodrigues & Ors.	...	Respondents

- Mr.Ramgopal S. Tripathi for the Appellant.
- Ms.Neela A. Dholakia for Respondent No.2(a).

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th OCTOBER, 2018.

P.C. :

1] This Application is filed by the Appellant seeking the relief of interim injunction restraining the Respondent from parting with possession of the suit flat or creating third party interest therein and specifically to continue the order dated 14/10/1987 read with order dated 17/11/1987, which was passed by this Court in Notice of Motion No.2649 of 1987 in H.C. Suit No.3019 of 1987, which is now re-numbered as City Civil Court Suit No.123 of 1987.

2] It is submitted by learned counsel for the Appellant that the Appellant is the owner of the suit flat and this fact was admitted by

the Respondents also in their suit filed in Small Causes Court for declaration of the tenancy rights. However, in this suit before the trial Court, they have denied the ownership of the Appellant, hence trial Court has relying upon the order passed in Probate proceedings, dismissed the suit. In view thereof, it is submitted that the Appellant is having strong *prima-facie* case in the First Appeal to seek this relief of injunction and continuation of the Court Receiver.

3] Per contra, learned counsel for the Respondent has submitted that on the dismissal of the suit, the order of appointment of the Court Receiver also came to an end, as the Appellant has not filed any application for continuation of the said order, after the period of four weeks for which the trial Court has extended it. Hence, it is submitted that, once the suit is dismissed, the Appellant must show how he is entitled to get the Court Receiver appointed; especially when in the Probate proceedings, the Respondents are declared to be the owners of the suit property.

4] I have given my thoughtful consideration to the submissions of learned counsel for both the parties. It is undisputed that the Probate proceedings were decided ex-party and the Appellant has challenged the same. In view of the decision in the Probate proceedings, the trial Court has dismissed the Appellant's suit.

5] Admittedly, the Respondents are in possession of the suit flat and the Appellant is not asking for disturbing their possession. The Court Receiver was appointed way back in the year 1987 and as on today also, the Court Receiver is not discharged by the order of the Court. In view thereof, it would be proper to continue the same arrangement, which was made as per the order passed by this Court on 14/10/1987 and 17/11/1987 as whatever findings are given by the trial Court, are subject to the judicial scrutiny in the First Appeal.

6] Under these circumstances, this Civil Application is allowed. The Respondents are restrained from creating third party interest in the suit flat during the pendency of this Appeal and further the order of the Court Receiver passed by this Court on 14/10/1987 read with the order dated 17/11/1987 is continued till the decision of the Appeal.

7] The Civil Application is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]