

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

**APPEAL FROM ORDER (ST.) NO. 23234 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 23235 OF 2018**

Anis Ahmed Nisar Ahmed Khan & Ors.	...	Appellants
V/s.		
Smt.Kaisar Jahan Nazim Khan	...	Respondent

- Mr.Siddharth D. Magdum for the Appellants.
- Mr.Shivraj Kunchge for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the Appellants and learned counsel for the Respondent.

2] This Appeal takes an exception to the order dated 03/07/2018 passed by Principal Judge, City Civil Court, Gr. Bombay, thereby making the Notice of Motion absolute and directing the Court Receiver to take possession of the suit premises and to appoint the Plaintiff as his agent by delivering the said possession to her.

3] The facts of the present 'Appeal from Order' are very disturbing in the sense that the Respondent herein is the daughter of the Appellant No.4, Appellant No.1 is her brother and Appellant No.2

and 3 are her sisters. She has come to the Court with a specific case that the suit plot was purchased by her father and during the lifetime of her father itself she was given one separate room admeasuring 10 x 12 feet in the corner of the building constructed by her father. She was residing therein along with her children since years together. After the death of her father however in the year 2012, the Appellants herein are trying to dispossess her illegally, forcefully and finally she was dispossessed on 19/10/2015. Since then along with her small children she is constrained to reside in the small space admeasuring 8x10 feet in the passage of the said building. The said passage does not have any basic amenities also. Hence, she is constrained to file this suit for restoration of possession under Section 6 of the Specific Relief Act. Alongwith the said Suit, she has filed this Notice of Motion for appointment of the Court Receiver to takeover the possession of the suit premises and allow her to have the said possession during pendency of the suit.

4] The Appellants herein have resisted the said Notice of Motion by contending *inter-alia* that the Respondent was not at all in possession of the suit premises and she is claiming right on some room in which she was not at all any possession nor having any concern therewith.

5] The trial Court has therefore, in order to appreciate the rival contentions raised by both the parties, appointed the Court Commissioner and the Court Commissioner Report showed that the Respondent is at present residing in the passage along with her children and she had also shown the room in which she was in possession.

6] The trial Court has therefore on the basis of the Commissioner's Report and the documents produced on record by the Respondent proving her possession in the suit premises, had allowed the Notice of Notice and directed the Court Receiver to take over the possession of the suit premises and to hand it over to the Respondent as his agent.

7] This order of the trial Court is challenged in this Appeal by learned counsel for the Appellants on two fold grounds. In the first place, it is submitted that the trial Court has granted final relief to the Respondent at the interim stage itself and that too, without allowing the parties to lead any evidence in support of their respective contentions. It is submitted that as per the settled position of law the relief of mandatory injunction cannot be granted at the interim stage.

8] Secondly, it is submitted that the description of the suit premises as given by the Respondent in the plaint is not tallying with the description given by the Court Commissioner in his report and therefore, it is clear that the Respondent is claiming right and possession over some different room and she is doing so for the first time. Hence, it is submitted that the impugned order passed by the trial Court cannot be sustainable in law and facts and hence it is liable to be set-aside.

9] Per contra, learned counsel for the Respondent has supported the said order.

10] It is true that, normally at the interim stage, this Court or even the trial Court does not grant the relief, which is claimed as a final relief in the suit. However, some times the facts of the case are such that this Court is constrained to grant such relief, which is mainly to restore the status-quo ante or to restore the possession to the person who has been dispossessed therefrom forcefully.

11] Here, in the case, the Respondent has produced on record sufficient documents, as observed by the trial Court, namely, Ration

Card, Children's reports, Birth Certificates, Aadhar Cards, Election Cards, School Certificates etc. showing that she was in possession of the suit premises since years together. She has also filed on record the police complaints to show that every effort was made to dispossess from the suit premises and ultimately the Appellants succeeded in their efforts.

12] The Court Commissioner's Report goes to show that at present she is constrained to reside in the passage of the suit premises. Therefore, it follows that she was dispossessed from one of the room from the said property.

13] As regards the measurement of the room, she being an uneducated lady, she cannot be expected to give exact measurement but the facts remains that she was in possession of one of the rooms. The Court Commissioner's Report also shows that she was residing in one of the room and she has shown that room to him.

14] In such situation, if the trial Court has at the interim stage granted the appointment of the Court Receiver to take over the possession of the suit premises and to handover the same as his agent to the Respondent, no fault can be found in the impugned order of the

trial Court. Needless to state the, the hearing of the suit is bound to take years together and thereafter Revision and other legal proceedings will follow. Therefore, during all this time, if the Respondent is required to reside along with her small children in the passage, then it will amount to parody of justice and cannot advance the substantive cause of justice.

15] Therefore, sometimes the law has to be molded according to the exigencies of the case. This is a fit case where the trial Court was therefore justified granting the final relief at the interim stage. It also does not mean that due to grant of such relief the trial Court has held that the rights of the Respondent are established or held to be proved. She is to be given possession of the suit premises only as an agent of the Court Receiver and that too, till the decision of the suit. Hence, no interference is called for in the impugned order.

16] It is painful to note that though Respondent is the daughter of Appellant No.4 and the sister of other Appellants, they have not only dispossessed her forcibly along with her small children, but contested the matter so hotly. It is something to be ponder upon by everyone. It is earnestly hoped that the parties arrive at some amicable settlement of the dispute, instead of dragging the matter to

the police station and to the Court.

17] Be that as it may, it is after-all for the parties to take appropriate call but so far as the Appeal is concerned, this Court does not find any reason to interfere in the impugned order passed by the trial Court, which is fully justified in the facts of the present case.

18] Hence, the Appeal stands dismissed.

19] In view of dismissal of the Appeal, nothing survives in the Civil Application, hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]