

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.34 OF 2017

Vimal Dattatray Malode & Ors.	 Appellants
V/s.	
Sharad Ananda Deore & Ors.	 Respondents

Mr. Atul Damle, Senior Counsel, i/by Mr. Sachin Gite, for the Appellants.

Ms. Tanaya D. Goswami, a/w. Ms. Sneha G. Sanap, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND FEBRUARY 2018.

P.C. :

1. Heard Mr. Damle, learned Senior Counsel for the Appellants, and Ms. Goswami, learned counsel for the Respondents.

2. This Appeal from Order is placed before this Court in view of the order of the Hon'ble Chief Justice dated 27th April 2017, considering that Civil Writ Petition No.3964 of 2015, pending between the same parties, is before this Court.

3. This Appeal from Order takes an exception to the order dated 8th April 2015 passed by the learned I/c. District Judge-2, Malegaon, below "Exhibit-31" in Regular Civil Appeal No.48 of 2004. The said application

was preferred by the present Appellants, who are the Respondents before the Appellate Court and Original Plaintiffs before the Trial Court. The application was preferred for temporary injunction to restrain the present Respondents from obstructing their possession in the suit property.

4. The said application was resisted by the present Respondents and the Appellate Court has, after discussing and analyzing the evidence of Defendant No.1 recorded in the said Suit, has held that the Appellants have failed to establish their possession in the suit land and, accordingly, rejected the said application.

5. However, as rightly pointed out by learned counsel for the Appellants, the 1st Appellate Court could not have, at the interim stage, analyzed the evidence of the witness and given a finding against the one, which was recorded by the Trial Court while decreeing the Suit partly. The Trial Court has, in the subject Suit, specifically framed Issue No.4, as to *'whether the Plaintiffs prove that they are in possession of the suit property from 9th March 2002, as alleged?'*. The Trial Court has discussed the said issue in paragraph No.41 of its Judgment and has categorically held that, the Plaintiffs had proved that they are in possession of the suit property since the year 2002.

6. In view of this specific finding arrived at by the Trial Court while deciding the Suit, unless and until that finding is set aside at the time of decision of Appeal, the Appellate Court could not have, at an interim stage, analyzed the admission given by Defendant No.1 before the Trial Court and held that the Plaintiffs have failed to prove their possession over the suit property. The impugned order passed by the Appellate Court is, therefore, totally against the settled principles of law and on this very ground itself, it is liable to be quashed and set aside.

7. Accordingly, the Appeal from Order is allowed. The impugned order passed by the learned I/c. District Judge-2, Malegaon, stands set aside.

8. As a result, the application at "Exhibit-31" filed by the Appellants before the 1st Appellate Court is allowed and the Respondents are restrained from causing obstruction to the possession of the Appellants in the suit property till the decision of the Appeal.

9. Appeal from Order is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]