

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

CIVIL APPLICATION NO. 4181 OF 2017
IN
FIRST APPEAL NO. 214 OF 2018

Vishnu Jayram Gujar & Ors. ..Applicants

v/s.

Anil Dattatraya Chogle & Ors. ..Respondents

Mr. Shriram Kulkarni for the Applicant/Appellants.
Mr. Umesh Yerunkar for the Respondents.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 17th APRIL, 2018.**

P.C.

1. By this application, the applicants herein who are the defendants in Suit No. 7673 of 2002 have sought stay of the execution of judgment and decree dated 3rd November, 2017, whereby the Civil Judge, City Civil Court, Gr. Bombay has decreed the suit and has restrained the applicant-defendants from disturbing the possession and occupation of the respondent-plaintiff in respect of the suit property under CTS No. 202 and 202/1 at Lokmanya Tilak

Road, Babhai, Borivali (West), Mumbai. The applicant-defendants are also restrained from encroaching upon the said property and further interfering with and/or stopping the respondent-plaintiff from repairing the wall which is separating the suit property from the property of the defendants. The appellant-defendants are also restrained from interfering with, and/or stopping the respondent-plaintiffs from demolishing the shed on the plaintiffs plot.

2. Heard Shri Kulkarni, learned Counsel for the appellant-defendants and Shri Yerunkar, learned Counsel for the respondent-plaintiffs. I have perused the record and considered the submission advanced by the learned Counsels for the respective parties.

3. The respondents and the appellants shall be hereinafter referred to as the plaintiffs and defendants respectively.

4. The dispute is in respect of property under Survey No. 202 and 202/1, situated at Lokmanya Tilak Road, Babhai, Borivali (W), Mumbai. The said property shall be hereinafter referred to as the suit property. The plaintiffs claim to be the owner in possession of the suit property. The plaintiffs claimed that the defendants were interfering with their possession and hence filed a suit for permanent

injunction. The defendants took a specific plea that the tin shed was existing in the suit property and that the plaintiffs had sold the said shed to one Pralhad in the year 1967. The defendants further claimed that the plaintiffs had entered into an agreement in respect of the suit property with a developer and had put the said developer in possession of the suit property. The defendants claimed that the said developer entered into an agreement with them and put them in possession of the suit property. Based on the said agreement, the defendants claim to be in possession of the suit property.

5. The records prima facie indicate that the property is recorded in the Revenue Records in the name of the plaintiffs. The defendants have not disputed that the plaintiffs were the original owners in respect of the property. The defendants claim right in the property through a developer, with whom the plaintiffs had allegedly entered into an agreement. The evidence on record prima facie indicates that the plaintiffs had canceled the said agreement with the said developer. Prima facie there is no material on record to indicate that the said developer had challenged the cancellation of the said agreement. In the light of the above, prima facie the plaintiffs

continue to be the owners in possession of the property.

6. Furthermore, the records reveal that injunction was operating against the defendants till the disposal of the suit which fact also indicates that the defendants were not in possession of the said property till the disposal of the suit. Having perused the documents and the records of the suit as well as the finding recorded by the trial court, I am of the prima facie view that the plaintiffs are in possession of the suit property and hence the execution/operation of clauses (1), (2) and (3) of the operative part of the impugned judgment cannot be stayed.

7. As far as clause no.(5) of the operative part of the order is concerned, the learned Counsel for the plaintiffs has made a statement that the plaintiffs will not demolish the shed till disposal of the appeal. Said statement is accepted.

8. Subject to the above statement, the application stands dismissed.

(ANUJA PRABHUDESSAI, J.)