

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 CIVIL APPLICATION NO.12534/2019
IN
SECOND APPEAL NO.570 OF 2019

MACHINDRANATH SHEKU KORDE
VERSUS
SHRIRAM SEVA RATHOD AND OTHERS

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Mr.P.P. More h/f Mr.Y.K. Bobade, Advocate for
the applicant.

Respondent No.1 though served absent.

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CORAM: V.L. ACHLIYA,J.

DATE : 19.11.2019

ORAL ORDER:

Leave granted to amend the prayer
clause. Amendment to be carried out
forthwith.

2. Learned counsel for the applicant
submits that on satisfaction that the appeal
raises substantial questions of law to
entertain the appeal, this Court has admitted
the appeal. It is submitted that pending
disposal of the suit as well as appeal
injunction was operating as against the
defendants. After disposal of the appeal, the
first Appellate Court has ordered to maintain
status-quo for four weeks.

3. By referring to overall facts of the case and merits of the matter, the learned counsel submits that though the first Appellate Court has found the judgment and decree passed by the trial Court as erroneous still dismissed the appeal. It is submitted that the Courts below have consistently held that the plaintiff is owner and possession of the suit plot no.5. The defendant no.1 has also not disputed the ownership, title and possession of the plaintiff over suit plot no.5. The defendant no.1 has claimed ownership, title possession in respect of plot no.3. Although the plaintiff and defendant are having distinct properties still the Courts below refused to grant relief of injunction as claimed in the suit.

4. It is submitted that the trial Court though observed that the plaintiff has proved the ownership and title over the disputed plot i.e. plot no.5 and claim of the plaintiff supported with copy of the registered sale deed produced at Exhibit-39 specifying boundaries of suit plot, still observed that the plaintiff has failed to establish the location of the said plot. It is submitted that the reasons and findings

recorded by the trial Court in that respect found to be erroneous by the first Appellate Court, still the first Appellate Court dismissed the appeal by holding that no cause of action arose for filing of suit.

4. On due consideration of submissions advanced in the light of overall facts of the case, evidence adduced in the case, I am of the view that the case is made out to grant interim relief in terms of prayer clause "C". During pendency of the suit as well as appeal, the injunction was operating in favour of the plaintiff and as against defendant no.1. There is no dispute that the plaintiff has purchased the plot no.5 by registered sale deed dated 03.12.1998 and defendant no.1 has subsequently purchased the plot no.3. Properties held by plaintiff and defendant no.1 are distinct properties. The defendant no.1 has not claimed right over the property in possession of plaintiff. No dispute as to identity of property of plaintiff in issue in the suit filed by plaintiff. In that view, grant of interim relief would not cause any prejudice to the defendants. I am therefore inclined to allow the application in terms of prayer clause

"C". Accordingly the application is allowed in terms of prayer clause "C" and the same stands disposed of.

[V.L. ACHLIYA]
JUDGE

SGA