

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2085 OF 2018

Rahim Najir Sayyad	...Petitioner
vs.	
Rakhamabai Pralhad Garad and Anr.	...Respondents

Mr. Ajay Joshi, for the Petitioner
None for the Respondents.

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

P.C.:

. Heard Mr. Joshi, learned counsel for the Petitioner.

2. The challenge in this Petition is to the orders dated 29th December, 2015 and 12th August, 2016 made by the learned trial Judge as well as Appeal Judge restraining the Petitioner from interfering with the possession of Respondent No. 2 over the suit plot.

3. Mr. Joshi, learned counsel for the Petitioner pointed out that by an order dated 8th February, 2016 the Appeal Court has granted status-quo order in regard to both, the Petitioner and the Respondent No. 2 who are in possession of the suit property. He

further submits that the Appeal Court has not even looked into the relevant and factual material on record like photographs and affidavits before determining the Respondent No. 2 is in possession of the suit property. He therefore submits that the impugned orders are liable to be set aside. He also submits that the Petitioner is the Plaintiff in the suit and Respondent No. 2 was impleaded because Respondent No. 1 instead honouring the agreement made with the Petitioner, sold the suit property, in favour of the Respondent No. 2. He submits that even this aspect is required to be taken into consideration by the Appeal Court and since this is not being done, the impugned order warrants interference.

4. The observations made in the ad-interim order dated 8th February, 2016 can not be taken as final. So also the observations made in the impugned order on the aspect of possession also can not be taken as final. All these are interim orders and the two Courts have only recorded *prima facie* finding that it is Respondent No. 2 who is in possession of the suit property and therefore protected such possession.

5. The two Courts have considered the material on record and

this is not a case where the view taken by the two Courts is said to be unreasonable. Taking into consideration, the limited parameters of the interference in such matters, there is really no case made out to interfere in the impugned order.

6. Accordingly, this Petition is dismissed.

7. Further it is made clear that the observations made in the impugned order or for that matter in the present order, are only *prima facie* for the purpose of deciding the issue of interim relief. Therefore, the trial Court need not be influenced by such observations whilst deciding the main suit on the merits. The main suit is to be decided on its own merits and by taking into consideration the evidence which the parties lead in the suit.

8. With the aforesaid observation, the Petition is disposed of.

9. There shall be no order as to costs.

10. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)