

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

**APPEAL FROM ORDER NO. 115 OF 2018
WITH
CIVIL APPLICATION NO. 152 OF 2018**

Mr. Madhavlal Narayanlal Pittie ..Appellant

v/s.

Pramodkumar Jagatnarayan Shrivastav ..Respondent

**AND
APPEAL FROM ORDER NO. 123 OF 2018
WITH
CIVIL APPLICATION NO. 165 OF 2018**

Mr. Madhavlal Narayanlal Pittie ..Appellant

v/s.

Lalji Uditnarayan Dube ..Respondent

Ms. Amita Shukla-Castelino I/b. B.N.Shukla & Co. for the Appellant.
Mr. J.B.Mishra for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 05th MARCH, 2019.**

P.C.

1. The appellants herein have challenged the Order dated 29th August, 2017 whereby the learned Judge of the City Civil Court,

Bombay has allowed the Notice of Motion No.1944 of 2015 and 1977 of 2015 filed by the aforesaid respondents in S.C.No.1252 of 2015 and 1256 of 2015. By the impugned Order the appellant-defendant has been restrained from disturbing possession of the plaintiff in respect of the old premises and/or dispossessing him from the suit premises without following due process of law.

2. Heard Ms. Shukla, the learned Counsel for the appellant and Mr. Mishra, the learned Counsel for the respondent. Perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

3. The respondents who are the plaintiffs in the suit had claimed to be in possession of the suit premises, more particularly described in para 1 of the plaint as Room No.13, Shival Motilal Compound, Belasis Road Garage, Mumbai Central, Mumbai. The plaintiffs have relied upon several documents such as ration card, driving license, Voter's ID, Aadhar Card etc in support of their contention that they are in possession and occupation of the suit premises since long. Apprehending forcible dispossession by the applicant-defendant, the respondent-plaintiff filed a suit for permanent injunction and by way

of interim relief sought to restrain the applicant-defendant from dispossessing them from the suit premises without following due process of law.

4. The learned Judge has granted the Notice of Motion only on the basis of the averments in para 6 of the written statement, which the learned Judge has held to an admission that the plaintiff is in possession of the suit premises. The learned Judge therefore held that even if the possession of the plaintiff is that of a trespasser, the defendant cannot have dispossess the plaintiff without taking recourse to law.

5. Having gone through the written statement, I am unable to find any such unequivocal admission either in para 6 or any other para of the written statement that the plaintiff is a rank trespasser and that the documents produced by the plaintiff are not in respect of the suit premises. In para 11 of the written statement, the defendant has averred that neither the plaintiff nor his family members had ever stayed in the suit premises permanently. In para 15 of the written statement, the defendant had again denied that the plaintiff is in exclusive use, occupation and enjoyment of the suit premises. The

defendant had stated that the documents relied upon by the plaintiff do not pertain to the suit premises. And has alleged in para 14 that the documents relied upon by plaintiff were obtained by playing fraud. In the light of these pleadings, the learned Judge could not have granted relief of temporary injunction on the ground of admission. The learned Judge was required to consider the pleadings as a whole. Upon considering all the relevant material and the pros and cons of the case, the learned trial Judge was required to record his finding on three pre-requisites i.e. prima facie case, balance of convenience and irreparable loss. The learned Judge has neither considered the pleadings nor the documents produced by the parties and has not recorded his finding on these three basic principles.

6. Under the circumstances, the impugned order cannot be sustained. Hence the appeals are allowed.

7. The impugned order is set aside, and the matter is remanded to the trial Court to decide the matter afresh after considering the pleadings as well as the other material on record.

8. Ad-interim relief granted by the trial Court by Order dated 11th

May, 2015 shall remain in force till the notice of motion is decided on merits.

9. The learned Judge to endeavor to dispose of the notice of motion as expeditiously as possible, and in any event within a period of six months from the date of receipt of this order.

10. The appeals stand disposed of. In view of disposal of the appeal from orders, civil applications do not survive and the same are disposed of.

(ANUJA PRABHUDESSAI, J.)