IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 43 OF 2019
WITH
CIVIL APPLICATION NO. 55 OF 2019
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IN
APPEAL FROM ORDER NO. 43 OF 2019

Marina Denzil Dias and Ors. ... **Appellants**
V/s.
Mr. Mahesh Narayan Bhandari and Ors. ... **Respondents**

Mr. Ralston Fernandes for the Appellants.
Mr. D. Y. Chitnis a/w. Ms. Sonali Dalvi i/b. M/s. Deepak Chitnis-Chiparikar & Co. for the Respondents.

CORAM : A. S. GADKARI, J.

DATE : 12th February 2020.

P.C. :

1] The appellants/original-defendants impugns order dated 5.09.2018 passed by learned Judge of City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 2313 of 2018 in S. C. Suit No. 1979 of 2018, allowing the said motion and making it absolute in terms of prayer clauses (a) and (b). Prayer clauses (a) and (b) of the said Notice of Motion reads as under:

> *"(a) that pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to pass a temporary order of injunction thereby restraining the Defendants, their servants, agents and all persons claiming thorough, by and/or under them from interfering*

with and/or obstructing and or committing any trespass and/or removing the lock put on the entrance gate of the said suit property and/or dispossessing the Plaintiffs from the said suit property as more particularly mentioned in the Schedule, which is annexed as Exhibit 'A' hereto and shown in the City Survey Plan, which is annexed as Exhibit B hereto.

(b) that pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to pass a temporary order of injunction thereby restraining the Defendants, their servants, agents and all persons claiming through, by and/or under them from creating any third party rights and /or encumbrances on the said suit property or any part or portion thereof as more particularly mentioned in the Schedule, which is annexed as Exhibit 'A' hereto and shown in the City Survey Plan, which is annexed as Exhibit B hereto".

2] Learned counsel for the appellants submitted that, the Trial Court while passing the impugned order, in para no. 7 has erroneously recorded a finding that, the respondents are 'protected tenant' in the suit property. He submitted that, relying on 7/12 extract of the suit property of the year 1991-1992, the Trial Court has recorded the said finding. He submitted that, the appellants are in actual use, occupation and possession of the suit property and therefore, there is no question of grant of injunction against the appellants/landlords. The revenue record discloses that, the names of appellants as landlords, incorporated by the concerned Authority in the 7/12 extract. He submitted that, the Trial Court has proceeded to grant interim relief in favour of the respondents wrongly or erroneously and therefore, the impugned Order dated 5.09.2018 be set aside by allowing the present appeal.

3] Mr. Chitnis, learned counsel appearing for respondents/original-plaintiffs, opposed the appeal and submitted that, there is error pertaining to nomenclature, in describing the plaintiffs as 'protected tenant', of the suit premises. As a matter of fact, the respondents are cultivating the suit property and the revenue authority has recorded the said fact in the 7/12 extract issued by it of the year 1991-92. He submitted that, as a matter of fact, the respondents are in physical possession of the suit property, which is the reason, the Trial Court has granted injunction in terms of prayer clauses (a) and (b) of the Notice of Motion, filed by respondents in the said suit. He submitted that, the present appeal has no merit and may be dismissed, summarily.

4] Perusal of record would indicate that, upon receipt of an application dated 01.08.1990 from the predecessor in title of the respondents, the Tehsildar, Borivali Division conducted inspection of the suit land and during the course of it, he found that, Narayan Bhandari was cultivating the said land and therefore, his name was entered into the column of cultivator of land in the 7/12 extract for the year 1991-92. Prima-facie, it appears that, Narayan Bhandari continued to be in possession of the suit land, as cultivator and was cultivating vegetables in it.

The revenue record i.e. 7/12 extract, issued by the Revenue Authority, prima-facie establishes that, the predecessor in title of respondents i.e. Narayan Bhandari was in possession of the suit property, as cultivator and

after his demise, the respondent Nos 1 and 2 are in possession of the suit property. The Trial Court has therefore rightly granted injunction in favour of the respondent Nos. 1 and 2, being in possession of land, while allowing the said Notice of Motion. After perusal of the entire record, this Court is of the considered view that, the Trial Court has not committed any error while passing the impugned order.

5] Appeal being devoid of merits, is accordingly dismissed.

6] In view of dismissal of appeal itself, the Civil Application(s) Nos. 54 and 55 of 2019 do not survive and are also disposed off.

7] It is made clear that, the respondent nos. 1 and 2 shall not be benefited of the words “protected tenant” as reflected in para No. 7 and other part of the impugned order, either in the present proceeding or in any other proceedings, unless they establish the said fact under the relevant Act.

[A.S. GADKARI, J.]