

PMB

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

**APPEAL FROM ORDER NO.937 OF 2022
WITH
INTERIM APPLICATION NO.18591 OF 2022**

Pramod Balmukund Arya and anr. ..Appellants

VS.

Nilkanth Gajanan Bhagat and anr. ..Respondents

Mr. Piyush M. Shah, Mr. Dewang Shah, Hetta Sagar a/w Mr.
Chirag Unadkat for appellants.

Mr. Ashish Dubey for respondents.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 3, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. The challenge in this Appeal From Order is to an order passed by the trial Court dated 05.08.2022 partly allowing the Notice of Motion No.1974 of 2022 filed by the present respondents. The present respondents filed a suit for injunction. It was submitted by the present respondents-original plaintiffs that they are tenants in respect of the suit premises which are in their occupation by virtue of the necessary agreements which have been executed between them and Mr. Qureshi, who was earlier the occupant of the suit premises. The respondents pleaded that the appellants are obstructing their possession and hence the suit for

injunction. The trial Court for the reasons recorded granted an injunction in favour of the respondents.

3. Learned counsel for the appellants, assailing the order of the trial Court, submitted that they are the original defendants. In his submission the respondents are trying to forcefully entered into the suit premises taking advantage of transfer of electricity meter connection which was fraudulently obtained by one Mr. Qureshi in 2019. It is the submission of appellants that Mr. Qureshi was only permitted to keep his belongings for some time and was not residing in the suit premises. Learned counsel for the appellants submitted that the appellants are in possession of the suit premises.

4. I have gone through the impugned order. It is pertinent to note that even the appellants have filed a Suit No.2760 of 2021 before the City Civil Court in the year 2021 for declaring the purported sale deed dated 29.05.2010 allegedly executed by plaintiff no.1 in favour of the defendant no.1 (parties to this Appeal From Order are same) is fraudulent and bad in law and not binding on the appellants. In the said suit, the appellants averred that the respondent nos.1 and 2 are illegal occupants and are trespassers of the suit premises. The suit is pending.

5. The trial Court on the basis of the agreement, which according to learned counsel for the appellants is an unregistered document and on the basis of the electricity meter which was fraudulently transferred in favour of Mr.

Qureshi granted the injunction. I see no reason to interfere with the order of the trial court.

6. Learned counsel for the appellants was at pains to point out that the agreement which is alleged to be executed by the appellant no.1 in favour of respondent no.1 is fraudulent and in fact the premises were under lock and key. He submitted that what the trial Court has done is passed an order that the respondents should not be dispossessed without following due process of law. He submits that in any case, the Notice of Motion that is filed by the appellants in suit filed by them in Suit No.2760 of 2021 is pending a decision. He submitted that this is a fit case for appointment of Court Receiver.

7. In my opinion, these are matters which will have to be brought to the notice of the trial Court and decided by the trial Court in the first instance. Since the Notice of Motion in Suit No.2760 of 2021 is pending since 2021, if a request is made by the appellants to the trial Court for expeditiously deciding the Notice of Motion, the trial Court is requested to consider the request and make an endeavour to decide the Notice of Motion preferably within a period of three months from the date when this order is placed on record. Liberty to make a request to the Principal District Judge for clubbing of these two suits, which application shall be dealt with in accordance with law.

8. Appeal From Order is dismissed subject to the above observations. No costs.

9. In view of the disposal of the Appeal From Order, nothing survives for consideration in the Interim Application and the same stands disposed of.

(M. S. KARNIK, J.)