

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 142 OF 2023  
WITH  
INTERIM APPLICATION NO. 1804 OF 2023

Mrs. Priti Harish Maisheri ... Appellant/Applicant

*Versus*

Mrs. Veena Vinod Maisheri & Anr. ... Respondents

Mr. Shailendra S. Kanetkar a/w. Ms. Madhuri Maisheri for the  
appellant/applicant.

---

CORAM: G. S. KULKARNI, J.  
DATED: 24 February 2023

---

P.C.

1. Heard Mr. Kanetkar, learned counsel for the appellant.
2. This Appeal from Order is filed assailing an order dated 24 January, 2023 passed by the learned Judge of City Civil Court at Bombay, rejecting an ad-interim relief on the Notice of Motion in question as filed by the appellant in S.C. Suit No. 145/2023.
3. The dispute in the present proceedings is between two sister-in-laws. Admittedly in the plaint, a categorical averment has been made that there was family arrangement in respect of the joint family property. In paragraph 4 of the plaint, it is averred that part of the estate was transferred in the name of Mr. Lakhamshi Kanji Maisheri, brother of Mr. Dhanji Kanji Maisheri and the respondents/defendants are the legal heirs of Mr. Lakshamshi Kanji Maisheri

along with others. In paragraph 5 of the plaint it has been categorically averred that though the part of the property was assigned in favour of Mr. Lakhamshi Kanji Maisheri as per the family arrangement, the structure standing thereon continued to be in use, occupation and possession of Mr. Dhanji Maisheri during his lifetime and after his death, his legal heirs. It is thus the contention of the appellant that his predecessor in title have acquired possessory rights in respect of the plot of land/suit land.

4. Respondents though served are not represented. Affidavit of service be placed on record by 27 February, 2023.

5. Mr.Kanetkar, learned Counsel for the appellant would contend that there are certain businesses which are being conducted by the appellant for which the suit premises are used inasmuch as the goods are stored in the godowns which is the suit property. Mr.Kanetkar's contention is that the appellant is seriously prejudiced inasmuch as after the impugned ad-interim order was passed, a gate has been put up in the property by the respondents. It is contended that by such action on the part of the respondents/defendants, the appellant is unable to have an ingress and egress to the suit property and/or remove the goods which are stored and hence there is likelihood that the appellant may face an action from the third parties.

6. Mr. Kanetkar has stated that after the impugned ad-interim order was passed by the City Civil Court, reply affidavit was filed on behalf of the respondents/defendants to the Notice of Motion.

7. In the aforesaid circumstances, it is quite clear that the Notice of Motion itself is pending adjudication before the learned trial Judge as also now a reply affidavit has been filed.

8. However, considering the case as urged before the Court today, in my opinion, without prejudice to the rights and contentions of the parties, it would be appropriate that the respondents are directed to open the gate and permit ingress and egress of the appellant for removal of the goods twice a week between 12 p.m. to 2 p.m. This shall be strictly without prejudice to the rights and contentions of the parties. The said arrangement in no manner is an expression on the merits of the rival contentions and the learned Trial Judge shall decide the Notice of Motion on its own merits.

9. In the position in which the parties stand, it is appropriate that the Notice of Motion itself is decided as expeditiously as possible and preferably within a period of three months from today.

10. Keeping open all contentions of the parties, Appeal from Order stands disposed of in terms of the above order. No costs.

11. In view of disposal of Appeal from Order, Interim Application would not survive. It is accordingly disposed of.

(G. S. KULKARNI, J)