

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.437 OF 2023
WITH
INTERIM APPLICATION NO.7916 OF 2023
IN
APPEAL FROM ORDER NO.437 OF 2023

RAMCHHAIBER PARMANAND
PANDEY & ANR.

....APPELLANTS

VS

RAJESH GAURISHANKAR
SHUKLA & ORS.

....RESPONDENTS

Mr. Rajendra R. Mishra a/w Mr. Saurabh R. Mishra for
Appellants/Applicants.

Mr. S.P. Shrivastava for Respondent No.2.

CORAM: SANDEEP V. MARNE, J.
DATE : SEPTEMBER 06, 2023.

P.C.:

1 By this Appeal, Appellants/Plaintiffs challenge order dated 9 March 2023 passed by the City Civil Court dismissing Notice of Motion No.3918 of 2019. In their Notice of Motion, the Appellants/Plaintiffs had prayed for two prayers. In prayer clause (a) he prayed for appointment of Court Receiver for taking actual and physical possession of the suit property. In prayer clause (b) the Appellants/Plaintiffs prayed for injunction against Defendant No.2 for transferring, alienating or creating third party rights or executing any leave and license agreement in respect of suit property.

2 The City Civil Court has observed that Defendant No.2 has acquired rights in respect of suit property on the basis of prior registered

agreement for sale dated 11 July 2014 whereas the deed of mortgage by conditional sale executed by Defendant No.1 in favour of Appellants/Plaintiffs is on 26 September 2014. There is no dispute to the position that Defendant No.2 has been in possession of the suit property and has been giving the same on leave and license agreement for time to time. In that view of the matter, the question of appointing Court Receiver for taking actual and physical possession of the suit property would not arise.

3 So far as prayer clause (b) in the Notice of Motion is concerned, the learned Counsel appearing for Respondent No.2/Defendant No.2 makes a statement before this Court that the Respondent/Defendant No.2 shall not sell, mortgage or create any third party rights in the suit property except granting leave and license thereof during pendency of the suit. The said statement is accepted.

4 The order of the City Civil Court is accordingly modified recording the statement made on behalf of the Defendant/Respondent No.2 that no third party rights would be created in respect of the suit property in any manner except by granting leave and license thereof during pendency of the suit. The Appeal is accordingly disposed of. All contentions of the parties are kept open.

5 In view of the disposal of the Appeal, the Interim Application also stand disposed of accordingly.

(SANDEEP V. MARNE, J.)