



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.304 OF 2021  
WITH  
INTERIM APPLICATION NO.2705 OF 2021  
IN  
APPEAL FROM ORDER NO.304 OF 2021

Mohd. Tahir Hamza Rakhangi ...Appellant

vs.

Ilyas Dawood Kagadi . ...Respondent

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Ms. Akanksha Agrawal, a/w. Ms. Aruna Savla and S. Nagvadaria, for the Appellant.

Mr. Gauraj Shah, i/b. Ms. Rupali Gond, for the Respondent.

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CORAM : SANDEEP V. MARNE, J.

DATE : 19<sup>th</sup> DECEMBER 2023

**P.C. :**

1. The challenge in the present appeal is to the order dated 15<sup>th</sup> June 2021 passed by the City Civil Court by which Notice of Motion No.1223 of 2021 filed by the Appellant/plaintiff for grant of temporary injunction is rejected. Plaintiff has instituted S.C. Suit No.1078 of 2021 against the defendant seeking restraint order from entering upon or remaining in or disturbing plaintiff's possession of the suit property. It is the plaintiff's case that the defendant has an alternate access to the structure and that he has no right to use any portion of the land in possession of the plaintiff for ingress or egress to the defendant's structure nor to occupy the suit property for any purpose.

2. I have heard Ms. Akanksha Agrawal, the learned Counsel appearing for the Appellant and Mr. Gauraj Shah, learned Counsel appearing for the Respondent.

3. Having considered the submissions advanced by the learned Counsel appearing for the parties and after perusal of the pleadings and the documents filed by the rival parties, to my mind, there are two issues, which arise at this stage for examining plaintiff's entitlement for temporary injunction. The first issue is whether the defendant can be permitted to use plaintiff's suit property for accessing his structure. This would be in the realm of an easementary right. The second issue is whether the defendant can be permitted to park his vehicles and/or remain on the plaintiff's suit property for any purpose except for ingress and egress to his structure.

4. So far as the first issue is concerned, there is a great deal of contest between the parties as to whether the defendant can be permitted to enter upon plaintiff's suit property for accessing the structure. I am shown photographs of defendant's structure, which apparently show total three entries thereto. The first and the main entry appears to be from the front side of the defendant's structure, which can be accessed by a road around the Dargah. This access does not pass through the plaintiff's suit property. However, there are two other entry points to defendant's structure, one at ground floor level and the other at the first floor level. Both apparently open in the plaintiff's suit property. It is the plaintiff's case that both these accesses have been recently opened by the defendant. On the contrary, it is the case of the defendant that the said access is being used by the defendant since the year 1954.

5. So far as the second issue of parking vehicles and/or remaining on the plaintiff's suit property for any purpose other than ingress and egress is concerned, there is no dispute to the position that the defendant does not claim any right, title or interest in the suit property. He however questions the right of the plaintiff over the suit property by contending that the land is actually in the ownership of the Municipal Corporation. In my view, in a suit filed by the plaintiff, defendant cannot seek a declaration as to whether the plaintiff is in authorised occupation of the land or not. What is relevant at this juncture is to observe that the defendant admittedly does not have any right, title or interest in the suit property. Therefore, even if the defendant can be permitted access to the structure through the suit property, it is difficult to accept that the defendant can use the suit property for parking his vehicles and/or for doing any activity other than ingress and egress.

6. In my view, therefore, the suit needs to be taken to trial. So far as the first issue is concerned, the order passed by the City Civil Court on 15<sup>th</sup> June 2021 can be maintained. However, so far as the second issue is concerned, the order passed by the City Civil Court would need modification. The defendant cannot be permitted to park his vehicles and/or to use the suit property for any purpose except for ingress and egress to his structure.

7. Accordingly, I proceed to pass the following order:

- (i) The order dated 15<sup>th</sup> June 2021 passed by City Civil Court shall stand modified to the extent that there shall be interim injunction against the defendant from parking his vehicle(s) on

the suit property and/or remaining on the suit property for any purpose other than ingress and egress to his structure. It is however clarified that the defendant shall be entitled to use the suit property solely for the purpose of accessing his structure during pendency of the suit;

- (ii) Considering the nature of controversy involved in the suit, the trial court is requested to expedite the hearing of the suit. Parties shall co-operate with the City Civil Court for expeditious disposal of the suit;
- (iii) All contentions of the parties on merits are kept open;
- (iv) The City Civil Court shall decide the suit without being influenced by any of the observations made in the present order;
- (v) With the above observations, the appeal is disposed of;
- (vi) In view of the disposal of the Appeal from Order, the interim application taken out therein does to survive and is disposed of.

**(SANDEEP V. MARNE, J.)**