

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.141 OF 2021
WITH
INTERIM APPLICATION NO.20647 OF 2022
IN
APPEAL FROM ORDER NO.141 OF 2021
WITH
INTERIM APPLICATION NO.1563 OF 2021
IN
APPEAL FROM ORDER NO.141 OF 2021

Mahesh Pandurang Vaidya & Anr.Appellant/Applicant

V/S

Rajesh Ramesh KoundinyaRespondent

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Ms. Prachi A. Tatake for the Appellant/Applicant.

None for Respondent.

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CORAM: SANDEEP V. MARNE, J.

DATE : NOVEMBER 01, 2023.

P.C.:

1 The present Appeal challenges the order dated 30 June 2021 passed by the City Civil Court, Mumbai rejecting the Notice of Motion No.1302 of 2021 filed by the Appellants/Plaintiffs for grant of temporary injunction. The Appellants/Plaintiffs have instituted S.C. Suit (Stamp) No.4415 of 2021 before the City Civil Court against the Defendant/Respondent seeking a declaration that Defendant has no right, title or interest in the suit premises and seeking a direction for removal of the lock illegally put by him on the said premises. Appellants/Plaintiffs have also sought the declaration for appointment of Court Commissioner for

breaking open the lock and to permit the Appellants/Plaintiffs to secure possession. Relief is also sought to injunct the Defendant from causing obstruction to the possession of Appellants/Plaintiffs over the suit premises. In the Suit, Appellants/ Plaintiffs filed Notice of Motion seeking various reliefs by way of temporary injunction such as appointment of a Court Commissioner, appointment of Court Receiver, for restraining the Defendants from dispossessing the Appellants/Plaintiffs and from creating third party rights in the suit property. By impugned order dated 30 June 2021, the City Civil Court has proceeded to reject the Notice of Motion *interalia* observing that the Defendant is not possessing the suit premises as trespasser and that if the Appellants/Plaintiffs desire ejectment of the Defendant from the suit premises, they will have to do so by following due process of law.

2 I have heard Ms. Tatake, the learned Counsel appearing for the Appellants/Plaintiffs. She would submit that one Ms. Sharayu Khopkar used to occupy the suit premises comprising of Ground Floor premises bearing Flat No.7 admeasuring 250 square feet, situated at Someshwar Niwas, Plot No.109, Dadasaheb Rege Marg, Shivaji Park, Dadar (West), Mumbai – 400 028. That said Smt. Sharayu Khopkar is no more and after her death, the premises are being locked and the Defendant is claiming interest in the suit premises without any authority of law. That the Appellants/Plaintiffs have never permitted the Defendant to occupy the suit premises. That therefore occupation of the suit premises by Defendant is by way of trespassing the same. That therefore the

Appellants/Plaintiffs have filed a suit for a declaration that the Defendant is a trespasser in the suit premises.

3 Ms. Tatake would further submit that since the suit premises are being locked for several years, the Appellants/Plaintiffs are unable to take care of the premises. That the Defendant is not permitting the Appellants/Plaintiffs to even inspect the suit premises, which are exposed to danger and encroachment by other persons. That in such circumstances, the Court Receiver needs to be appointed for the purpose of taking possession of the suit premises. She would submit that since the Defendant does not have any title in respect of the suit premises, he must pay royalty for occupation of the suit premises to the Court Receiver.

4 When the present Appeal came up for hearing on 23 July 2021, Advocate Mr. N.D. Jaywant appears on behalf of Respondent. This Court admitted the Appeal after hearing both the parties and passed following order in Interim Application No.1563 of 2021 :

‘The Respondent is directed not to create third party rights, title or interest in the Suit property either by himself or through his mother during the pendency of the Appeal and shall maintain status-quo with respect to the electricity meter, water connection and other necessary permissions granted by the Government Authorities which according to the Applicants are in the name of Smt. Sharayu Khopkar.

2 Interim Application is allowed in the aforesaid terms.’

5 It appears that though Advocate Mr. N.D. Jaywant had appeared on behalf of the Respondent on 23 July 2021, he did not file Vakalatnama. This Court therefore issued notices to Respondent after admission of the Appeal. The notice has been duly served on Respondent who has failed to appear despite receipt of the notice. On 8 March 2023, this Court directed Ms. Tatake to serve notice on advocate Mr. N.D. Jaywant. Accordingly she has served notice of hearing of the present Appeal on the said advocate. However, when Appeal is listed for hearing today, none appears on behalf of the Respondent. Since the notice in the Appeal is duly served on the Respondent, who has failed to engage an advocate, it is not necessary to further wait for appearance on behalf of the Respondent.

6 I have considered the submissions canvassed by Ms. Tatake. *Prima facie* there is no document to indicate that any title in favour of the Defendant to occupy the suit premises. Appellants/Plaintiffs are undoubtedly the owners of the suit premises. This Court has already granted interim protection to the Appellant/Plaintiffs by restraining Defendant from creating any third party rights in respect of the suit premises with further direction to the Defendant to maintain status quo in respect of the electricity meter, water connection and other necessary permissions granted by the Government authorities. In my view, the said interim protection can be continued till disposal of the Suit. Ms. Tatake would strenuously press for appointment of Court Receiver to take possession in the suit premises from the Defendant. However if that relief is granted at this stage, the same would tantamount to

dispossessing the Defendant, at the interlocutory stage. Therefore grant of prayer for appointment of Court Receiver for taking over the possession of the suit premises from the Defendant, at this stage, would not be appropriate.

7 In my view, therefore, the present Appeal can be disposed of by continuing the interim protection granted by this Court by order dated 23 July 2021 till disposal of the suit. Ms. Tatake would submit that both the Appellants are senior citizens aged 70 plus, therefore, the hearing of the suit needs to be expedited. Considering the nature of the suit, the City Civil Court can be requested to expedite the hearing of the suit.

8 Accordingly, the present Appeal is disposed of by directing that the interim protection granted by this Court on 23 July 2021 shall continue to operate till final disposal of the suit.

9 The City Civil Court is requested to expedite the hearing of the suit and to make an endeavour to decide it as expeditiously as possible preferably within a period of one year.

10 In view of the disposal of the Appeal from Order, both the Interim Applications are also disposed of accordingly.

(SANDEEP V. MARNE, J.)