

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 352 OF 2016

WITH

CIVIL APPLICATION NO. 453 OF 2016

IN

APPEAL FROM ORDER NO. 352 OF 2016

Hadees Habibullah

.....Appellant

Vs.

Siddique Mohammed Habibullah

.....Respondent

Mr.Jitendra B. Mishra a/w. Mr. Rupesh Dubey, Advocate for the Appellant.

None for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 4th SEPTEMBER, 2023

P.C.

1. This Appeal is preferred by the Original Plaintiff to challenge the dismissal of his Notice of Motion praying for temporary injunction to protect his possession over the suit property.

2. Learned counsel appearing for the appellant submitted that in the affidavit in support of the notice of motion, a specific apprehension is expressed that the respondent is trying to dispossess the appellant and hence, considering the facts on record and the contentions of both the

parties, the learned Judge ought to have granted injunction protecting the appellant, that he should not be dispossessed without following due process of law.

3. Learned counsel invited my attention to the relevant averments in the plaint as well as the affidavit in support of the Notice of motion. He further invited my attention to paragraph 11 of the impugned judgment and order, where the learned Judge has observed that the appellant/plaintiff in his rejoinder has admitted that he is in possession of Hut No. 8-14/23 and also Hut No. 8-13/23 which belongs to the defendant.

4. Learned counsel, by pointing out this observation, submitted that there is no such admission on the part of the appellant/plaintiff in his affidavit in rejoinder. Learned counsel submitted that the suit property is Hut No. 8-14/23, and the defendant, in his reply, has, in fact, admitted that the suit premises belong to the appellant/plaintiff.

5. Learned counsel, therefore, submitted that the appellant has not made any amalgamation with respect to the suit premises, and the premises belonging to the defendant and that the prima facie finding recorded by the learned Judge is baseless. He thus submitted that the same could have been a ground for rejecting the prayer of the appellant for granting a temporary injunction.

6. Learned counsel submitted that once the defendant admits that the suit premises belong to the appellant/plaintiff and when the appellant in his pleadings and submissions expressed apprehension of dispossession, the learned Judge ought to have granted an injunction to protect the possession of the appellant. He further submitted that in any event, considering the pleadings on record, the appellant was entitled to at least a protection, thereby directing that he should not be dispossessed without following due process of law.

7. I have perused the record of the appeal. So far as the apprehension of the appellant seeking interim protection from dispossession is concerned, the cause of action pleaded is of the year 2014, thereby expressing that the defendant had tried to dispossess the appellant from the suit premises forcibly. Similar pleadings are made in the affidavit in support of the Notice of Motion seeking temporary injunction pending the suit. With reference to the pleadings of the plaintiff, the respondent/defendant, in his reply, has admitted that the appellant is holding the suit premises. However, in paragraph 2(l) of the affidavit in reply, the respondent/defendant has denied the allegation levelled against him that he had tried to dispossess the appellant forcibly. He has further contended that the appellant has settled in his native place and that after the appellant arrived in Mumbai from his native place in the month of July 2014, the suit premises were given on leave and licence basis to a third

party who is conducting a garment shop. A perusal of the rejoinder filed on behalf of the appellant shows that this specific contention is nowhere denied or even dealt with by the appellant/plaintiff.

8. In view of the aforesaid, I do not see any reason to grant any interim protection at this stage in the absence of any specific prima facie case made out by the appellant that there is any apprehension of dispossession.

9. The prayer for interim relief is similar to the main relief in the suit. The learned counsel submitted that the suit is at the stage of recording evidence. Hence, in the absence of any specific ground made out with respect to the apprehension of dispossession, I do not find any reason to interfere with the impugned judgment and order.

10. However, with respect to the observations made in paragraph 11 of the impugned judgment and order regarding two premises being amalgamated by the appellant is concerned, the said observations are at the stage of deciding the application for interim relief. Hence, it is clarified that the said observations would not come in the way of the appellant in the trial. It is made clear that the said observations are limited to the decision of the Notice of Motion for interim relief.

11. With the aforesaid observations, the Appeal from Order is dismissed.

12. In view of the dismissal of the Appeal from Order, pending Civil Applications do not survive; hence, the same are also dismissed as infructuous.

13. Needless to record that the suit to be decided on its own merits uninfluenced by the observations made in the impugned judgment and order as well as this order.

[GAURI GODSE, J.]