

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 627 OF 2023
WITH
INTERIM APPLICATION NO. 14154 OF 2023**

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KULKARNI

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Mahadev Bapurao Gawale ...Appellant

Versus

Chanda Rajendraprasad Singh and anr. ...Respondents

Mr. S. M. Gorwadkar, Senior Advocate, i/b Sujay Gangal, for
the Appellant.

Mr. Zain Mookhi, a/w Vikram Garewal and Himanshu
Agarwal, i/b Bellata Legal Services LLP, for the
Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 9th AUGUST, 2023

Order:-

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 27th July, 2023 passed by the learned Judge, City Civil Court, in Notice of Motion No.2329 of 2023 in SC Suit No.1654 of 2023, whereby the learned Judge was persuaded to dismiss the Notice of Motion taken out by the appellant – plaintiff to restrain the defendant from causing obstruction and interference with the appellant – plaintiff's possession over Shop No.1, admeasuring 8000 Sq. Ft. situated at Twin CHS, 2nd Cross Lane,

Lokhandwala Market, Andheri (W), Mumbai – 400 053 (“the suit premises”).

3. Mr. Gorwadkar, the learned Senior Counsel for the appellant, submitted that there are documents which show that the appellant is in possession of the suit premises and, at this stage, in the least the Court could have directed that the appellant shall not be dispossessed without following due process of law.

4. I have perused the impugned order.

5. The learned Judge, City Civil Court, has ascribed justifiable reasons to decline to grant the interim relief. A *prima facie* finding is recorded that the plaintiff was assistant of Rajendraprasad Singh, the father of defendant No.1, who claims to be the owner of the suit premises, and after the demise of Rajendraprasad Singh, the plaintiff with *mala fide* intention forged documents to stake claim over the suit premises. It would be difficult, in exercise of limited appellate jurisdiction, to interfere with such a *prima facie* yet categorical finding recorded by the learned Judge.

6. In any event, the instruments on which the appellant – plaintiff rests his case have not been executed by defendant No.1, who is stated to be the owner of the suit premises. In the

circumstances, no case is made out to entertain the appeal against the discretionary order.

7. Hence, the appeal stands dismissed.

8. The learned Judge is, however, requested to give due priority to the adjudication of the suit.

9. In view of the disposal of the appeal, interim application does not survive and stands disposed.

[N. J. JAMADAR, J.]