

VRJ

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

WRIT PETITION NO.11107 OF 2023

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VAIBHAV RAMESH
JADHAV
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Durgappa Gundappa Jadhav & Anr. ... Petitioners

V/s.

Pradip Narsih Pimparkar & Anr. ... Respondents

Mr. Prasad P. Kulkarni for the petitioners.

Mr. Shailendra Kanetkar i/by Mr. Sumit Kothari for the respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. Challenge in this petition is to the order dated 26th May 2023 rejecting application of the petitioners to maintain status quo during pendency of the petition.

2. The petitioners are original defendants against whom the Trial Court in exercise of powers conferred under Order 39 Rules 1 and 2 passed an order of injunction. In exercise of power under section 104 of the Civil Procedure Code, 1908, the defendants filed miscellaneous appeal challenging order passed below Exhibit 5. In the said appeal, the petitioners has filed an application under Order 39 Rules 1 and 2 restraining the plaintiffs from disturbing possession of the petitioners over the suit property. The Appellate Court has issued notice on the said application. Issuance of notice

on the such application amounts to refusal to grant ad-interim relief.

3. However, the petitioners in addition to application under Order 39 Rules 1 and 2 and in absence of application under order 41 Rule 5 of Civil Procedure Code, filed an application directing the plaintiffs to maintain status quo.

4. The source of power to pray for such relief is not disclosed in the application. Even during the arguments, learned advocate for the petitioners is unable to point out source of power to file such application. Normally, in an appeal challenging order of injunction under Order 39 Rules 1 and 2, application for stay is filed.

5. The relief of status quo is granted in an application under order 39 Rules 1 and 2 as it amounts to lesser relief than the larger relief of interim injunction. However, by independent application, the party is not entitled to pray for status quo in absence of interim prayer of injunction restraining other side from either disturbing the possession or from creating third party rights.

6. In absence of source of power to file such application, the Appellate Court was justified in rejecting the application.

7. However, it shall be open for the petitioners to pray for appropriate reliefs as are permissible in law before the Appellate Court in pending petition. There is no merit in the writ petition.

8. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)