



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 57 OF 2023

01 Yogendra @ Govind s/o Jamnadas
Shah, age: 68 years, Occ: Business,
R/o Bhagyodaya Machinery,
Housing Society, Near Old LIC
Office, Sagar Talkies Parisar,
Ambajogai, Tq. Ambajogai,
District Beed.

02 Chetna w/o Yogendra Shah,
age: 61 years, Occ: Household,
R/o as above.

03 Dr. Tejal d/o Yogendra Shah,
age: 43 years, Occ: Medical
Practitioner, R/o as above.

Appellants

Versus

01 Dineshchandra s/o Jamnadas Shah,
age: 81 years, Occ: Business,
R/o H. No. 8/713, Housing Society,
Near Old LIC Office, Sagar Talkies
Parisar, Ambajogai, Tq. Ambajogai,
District Beed.

02 Sau. Hasumati w/o Dineshchandra
Shah, age: 74 years, Occ: Nil,
R/o C/o Dineshchandra Jamnadas
Shah, H. No. 8/713, Housing Society,
Near Old LIC Office, Sagar Talkies
Parisar, Ambajogai, District Beed.

03 Parag s/o Dineshchandra Shah,
age: 49 years, Occ: Business,
R/o as above.

Respondents

Mr. S. B. Deshpande, Senior Counsel i/by Mr. Gajanan Kadam, advocate for the Appellants
Mr. V. D. Sapkal, Senior Counsel i/by Mr. N. D. Kendre, advocate for Respondents.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 24th January, 2024
Pronounced on : 01st March, 2024.

JUDGMENT :

1 The appellants, who are the original plaintiffs in Special Civil Suit No. 54/2022, have challenged the order dated 20.06.2023, passed by the learned District Judge-2, Ambajogai, District Beed i.e. the first appellate Court in Misc. Civil Appeal No. 73/2022 and also the order dated 15.11.2022, passed by the learned trial Court i.e. Joint Civil Judge, Senior Division, Ambajogai, District Beed, below Exhibit-5 in the aforesaid Suit. Under both the impugned orders, the application for temporary injunction, filed by the appellants-plaintiffs, has been rejected.

2 The background facts are as under:

The appellant no.1 and respondent no.1 are real

brothers and they purchased the suit house i.e. 8/713 jointly and raised construction thereon jointly. They started jointly residing in the suit house and also running business of machinery jointly. However, due to dominating nature of Respondent No.1, on several occasions dispute arose between them and their respective family members regarding issue of partition during lifetime of their father itself.

3 The appellants-plaintiffs, therefore, filed Special Civil Suit No. 54/2022 before the learned trial Court for partition, separate possession, declaration as well as injunction, including mandatory injunction along with damages and compensation with statement of accounts.

4 In the said suit, they filed an application for temporary injunction below Exhibit-5, but the learned trial Court, after hearing the parties, refused to grant any temporary injunction as per order dated 15.11.2022. The learned first appellate Court, in Misc. Civil Appeal No. 73/2022, filed by the appellants against the said order, has also dismissed the same vide order dated 22.11.2022. Hence,

this appeal.

5 The learned Senior Counsel appearing for the appellants vehemently argued that the relationship between the parties is not in dispute. Moreover, according to him, both the Courts below have rejected the prayer for temporary injunction despite there being voluminous documents on record showing possession of the appellants over the suit property jointly with respondents. He also pointed out that if this Court finds that this Appeal from Order is not maintainable, it can be converted into Civil Revision Application.

6 On the contrary, learned Senior Counsel appearing for the respondents, vehemently opposed the submissions made on behalf of the appellants and pointed out that the Appeal from Order is not at all maintainable against the impugned orders. He pointed out that even Civil Revision Application is also not maintainable due to the subsequent amendment in the Code of Civil Procedure. According to him, even though this Court has made interim

arrangement, during the pendency of this appeal, as regards possession of the parties over the suit house, but that does not mean that the impugned orders can not be tested on the basis of legal principles on the ground of maintainability. In support of his submissions, he placed reliance on the following judgments:

01 **Shobha Dinesh Supare & another Vs. Dinesh Namdeorao Supare**, 1992 BCI 95;

02 **Bharatkumar Shrimannarayan Agrawal & others Vs. Anita Trust, through, Priti Razanbhai Patel & another**, 2003 (1) Bom. C. R. 230;

03 **Rajabhau s/o Mahadeorao Rahate Vs. Dinkar s/o Shantaram Ingole**, 2002 (3) Mh.L.J. 921;

7 Heard rival submissions finally at the admission stage and also perused the documents on record.

8 Admittedly, both the Courts below have refused to grant any injunction as claimed by the appellants-plaintiffs in the suit as well as in the Misc. Civil Appeal, as mentioned

above. However, it is extremely important to note that this Court, before considering the appeal on merit, after having satisfied that there was sufficient evidence available with the plaintiffs that they were using and enjoying the suit premises, had passed an order on 06.11.2023 appointing the Court Commissioner to verify, whether utensils of the plaintiffs were lying in the suit premises.

9 Accordingly, the Court Commissioner i.e. Advocate Mr. Ashok Kawade, President of the Ambajogai Bar Association, inspected the suit premises and submitted his report, which was taken on record. Thereafter, this Court, after taking into consideration the said report of learned Court Commissioner, passed an order on 10.11.2023, observing that the respondents, by taking law in their hands, took forcible possession of the part of the suit premises, which were in the possession of the appellants-plaintiffs.

10 This Court, therefore, restrained the present respondents – defendants from allowing the appellants to enter into the suit premises and from disturbing their

peaceful possession, till the disposal of present appeal. This Court also directed the appellants that they may take assistance of police if the respondents-defendants would create hurdle in getting into the suit premises. The concerned PSO was also directed to assist the appellants-plaintiffs in getting peaceful entry and possession of the suit premises, as per the order of this Court. After passing such order, the learned Counsel for the respondents-defendants had also tried to claim stay of the said order, but such claim was refused by this Court.

11 During the course of arguments, it has been revealed that the appellants, with the help of order dated 10.11.2023 passed by this Court, have re-entered into the part of the suit premises. As such, due to such change in circumstances, the appellants-plaintiffs are now in possession of the suit premises, as per their earlier arrangement.

12 It is extremely important to note that against the order dated 10.11.2023, the respondents=defendants had also filed SLP to Appeal Nos.27068-27069/2023. However, the

Hon'ble Apex Court, vide order dated 12.12.2023, dismissed the said SLP by observing that it would not interfere in the impugned order dated 10.11.2023, passed by this Court, as the present appellants, who were respondents in the SLP, were *prima facie* found in possession of the suit premises. Not only this, but the Hon'ble Apex Court has also made it clear that since the suit of the appellants is pending before the trial Court, the parties would abide by the decision in the said suit in respect of their respective rights in the suit property.

13 The learned Senior Counsel for the respondents tried to argue that though the Hon'ble Supreme Court has confirmed the order dated 10.11.2023, as mentioned above, but the order of this Court is an interim arrangement and that does not mean that the present appeal should not be heard on merit.

14 It is extremely important to note that though the order dated 10.11.2023 is passed during the pendency of this appeal, but it has been revealed during the course of

arguments that the appellants-plaintiffs have restored their possession on the part of the suit premises, which was allegedly obtained forcibly by the respondents. Moreover, the Hon'ble Apex Court has also not interfered with the aforesaid order and observed that the parties would abide by the decision in the suit, which is for determining, whether the present appellants have any right in the suit property or not. Thus, even though the aforesaid order dated 10.11.2023 appears to be passed for the limited period i.e. during pendency of present appeal, but due to passing of such order, the appellants are put into possession of the suit premises jointly with the respondents. Therefore, under the changed circumstances, the appellants are definitely entitled for injunction, as prayed.

15 The learned Senior Counsel for the respondents, though raised certain objection about maintainability of the Appeal From Order, but after restoration of possession of the appellants-plaintiffs over the suit premises under order dated 10.11.2023, which has been confirmed up to the Hon'ble Apex Court, there is no propriety to discuss on this aspect in

the light of the judgments relied upon by the respondents.

16 In the result, considering all these aspects, the Appeal From Order stands allowed and the impugned orders, namely, the order dated 20.06.2023, passed by the learned District Judge-2, Ambajogai, District Beed i.e. the first appellate Court in Misc. Civil Appeal No. 73/2022 and also the order dated 15.11.2022, passed by the learned trial Court i.e. Joint Civil Judge, Senior Division, Ambajogai, District Beed, below Exhibit-5 in Special Civil Suit No.54/2022, are quashed and set aside; and the order dated 10.11.2023, passed by this Court, during the pendency of this appeal, is made absolute till final disposal of Special Civil Suit No. 54/2022.

17 The Appeal from Order is accordingly disposed of along with pending Civil Application No.11462 of 2023.

(SANDIPKUMAR C. MORE)
JUDGE

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