

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

**INTERIM APPLICATION NO.1672 OF 2024
IN
FIRST APPEAL NO.196 OF 2024**

Suresh Basappa Vali & Anr. ..Applicants/Appellants
Versus
Shridhar Shetty
Since deceased through legal heirs
Smt. Jayanti Shridhar Shetty & Ors. ..Respondents

Ms. Hemen Thakkar a/w Rohini Khedekar, for the Applicants/
Appellants.
Mr. Yatin R. Shah a/w Keyur Adhwaryu, for the Respondents.

CORAM : KISHORE C. SANT, J.

DATE : 1st MARCH, 2024

PC.

1. This Application is filed by the original Plaintiff whose suit came to be dismissed, for stay the implementation, effect, execution and operation of the order to the extent of allowing the counterclaim of the Respondents and directing the Plaintiff to hand over possession by removing Plaintiff himself, his family and his belonging and articles in the suit premises within two months from the date of order i.e. 29.11.2023.

2. Heard the parties.

3. It is the case of the Applicant that he was residing in the suit property (hut). There are also documents to show his possession. He was also given a photo-pass showing that he was residing in the suit premises in the survey conducted in the year 2000. He thus submits that in spite of this, learned Trial Court has dismissed the suit of injunction. He further submits that there was interim order in the suit protecting the Applicant. He thus prays for stay to handing over of possession.

4. Learned advocate for the Respondents vehemently opposes the Application. He states that there is specific evidence on record to show that the Applicant was working as watchman for the Defendant and for this reason he was given hut to reside there. The wife of the Applicant was also working as a maid in the house of the Defendant. He further submits that the evidence of the Plaintiff himself is not recorded. He examined his son who is born in 1983 and he deposed about the facts in 1980. It was necessary for the Plaintiff himself to get him examined. Even son of the Plaintiff has accepted that the wife of the Plaintiff was working at the place of Defendant in the year 1990 and was taking care of wife of Defendant No.1, as she was suffering from disease. This witness also accepted about this position in 1982. The Respondents thus submit that when the Applicant has failed to establish his right, he cannot seek any protection. The protection granted to him by the Trial Court was only that he could not be evicted without following due process of law. Now, there is clear order in favour of the Defendant

in suit. He thus prays for rejection of the Application.

5. Heard both sides. It is apparent on the face of record that Plaintiff was working as watchman of the Defendant and his wife was also working in the house of the Defendant as maid servant. Plaintiff could not prove his right over the hut. He has not even examined himself. The evidence of his son is of no use to the Plaintiff. No case is *prima-facie* made out to show that the impugned judgment is perverse or illegal. Considering all above, this Court is not inclined to allow the Application.

6. The Application therefore stands dismissed.

[KISHORE C. SANT, J.]