

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

**INTERIM APPLICATION NO. 1450 OF 2023
IN
FIRST APPEAL NO. 209 OF 2003**

Kalan Bijia since deceased through
his legal heirs Madhuri Kalan & Ors.

... Applicants
(Orig. Respondents)

In the matter between;

Ranchhad Bijiya

... Appellant

Vs.

Kalan Bijia since deceased through
his legal heirs Madhuri Kalan & Ors.

... Respondents

Adv. C.M. Kothari for the Appellant.

Adv. Sagar G. Talekar for the Respondents.

CORAM : KISHORE C. SANT, J.

DATE : 4th JANUARY, 2024

P.C.:-

1. Heard the parties for long time.
2. This Application is filed by the Respondent/Original Plaintiff and prays that the Appellant/Original Defendant to stop the further construction on the suit property and not to carry out any activity and not to create any third party interest.
3. Further relief is prayed to appoint Court Receiver and

to deposit the amount collected allegedly towards rent by the Appellant in respect of the said property. Proceeding was filed by the Respondent/present Applicant being Inventory Proceedings No.2 of 1996 in the Court of learned Civil Judge, Senior Division at Daman.

4. The learned Court allowed the proceedings against which the Appeal is preferred by the Defendant. It is not disputed that the Appellant is in possession of the property shown as item No.1 and item No. 2, on which now he has started the construction activity. This Court while admitting the Appeal has protected the Appellant and has noted earlier that there is no dispute in respect of possession. The interest of the Applicant certainly be taken care of at the time of final disposal of the Appeal.

5. This Court finds that no case is made out to grant any of the reliefs as prayed not in the Application except the prayer to create any third party interest in respect of the suit property. This Court therefore pass the following Order.

:ORDER:

- (i) Appellant/original Defendant is directed not to create third party interest in respect of the suit property.

(ii) If any construction is made or nature of the suit property is changed that would be subject to outcome of the first appeal.

(iii) The Application is disposed of.

6. Appeal be placed on 1st February, 2024.

(KISHORE C. SANT, J.)