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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 18 OF 2024**

Shri Maruti Chandru Sawant and Others... Appellants

Vs.

Shri Madan Gangadhar Dharangutti ... Respondents
and Others

Mr. Amardev Uniyal for the Appellant.

Mr. Omkar Kulkarni for Respondent No. 8.

CORAM : GAURI GODSE, J.

DATE : 23rd JANUARY 2025

ORDER :

1. Heard learned counsel for the appellants. This appeal arises out of dismissal of an interim application pending the first appeal. The first appeal is preferred by the appellants to challenge dismissal of the suit for specific performance. Pending the appeal the appellants applied for a temporary injunction restraining respondent no. 8 from disturbing the appellants possession over the suit property. The said application is rejected. Hence this appeal.

2. Learned counsel for the appellants submits that during the pendency of the suit there was an interim protection granted in favour of the appellants thereby restraining defendant no. 8 from

obstructing appellants sugarcane cultivation in 18 gunthas of land of the suit property. He therefore submits that similar protection be granted to the appellants during the pendency of the first appeal.

3. Learned counsel for respondent no. 8 submits that in the trial court's judgment findings are recorded while dismissing the suit that defendant no. 8 is found in possession of the suit property. He refers to the findings of the trial court in paragraph 49 of the judgment dismissing the suit. He thus submits there is no evidence that the plaintiffs are in possession of the suit property.

4. I have perused the papers of the appeal. The appellants are original plaintiffs who filed the suit for specific performance based on an agreement executed by the predecessor in title of defendant nos. 1 to 7. Defendant no. 8 is the purchaser from defendant nos. 1 to 7. A perusal of the judgment dismissing the suit reveals that the findings on possession are in favour of defendant no. 8.

5. The trial court after a full fledged trial after examining evidence held that the agreement relied upon by the plaintiff did not indicate that possession was handed over to the purchaser. For want of any evidence to support the plea of possession the trial court disbelieved the plaintiffs' case of being in possession by referring to the cross examination of PW-1 that the defendant was in

possession of the suit property. The plaintiffs' theory of being in possession is disbelieved.

6. In the absence of any prima facie evidence to support the plaintiffs' plea of being in possession, at this stage interim injunction to protect the plaintiffs' possession cannot be granted. Suit for specific performance is dismissed on 12th June 2023.

7. Hence, for the aforesaid reasons I do not see any merit in the appeal. The reasons recorded by the first appellate court to refuse the prayer for injunction cannot be faulted.

8. However, to avoid any multiplicity of proceedings, respondent no. 8 shall not create any third party rights in respect of the suit property during the pendency of the suit.

9. It is clarified that in the event respondent no. 8 intends to create any third party rights, he will be at liberty to file appropriate application for permission in the first appeal.

10. Appeal from order is disposed with aforesaid clarification.

[GAURI GODSE, J.]