

Sumedh

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

APPEAL FROM ORDER NO.845 OF 2024

Satyaram Jhillu Jaiswal	... Appellant
V/s.	
Lachchiram Jhilu Jaiswal	... Respondent

**WITH
INTERIM APPLICATION NO.15055 OF 2024
IN
APPEAL FROM ORDER NO.845 OF 2024**

Mr. Angad Giri a/w. Adv. Sagar Batavia for the Appellant.
Mr. A.A. Mirza a/w. Adv. Aadil T., Adv. Mizba Khan for the
Respondent.

CORAM : KAMAL KHATA, J.

DATED : 3RD NOVEMBER 2025.

P.C. :

1. By this Appeal, the Appellant seeks to set aside the Order dated 18th September 2024. Learned Advocate for the Appellant submits that the Respondent is attempting to dispossess the Appellant from the premises wherein he is carrying on the business of a flour mill.

2. Learned Advocate for the Appellant draws attention to Annexure-II at page 28 of the Appeal memo at Serial No.308,

where the Appellant's name is registered in the records of the competent authority. He further refers to page 29, which contains the permission issued by the Municipal Corporation of Greater Mumbai ('MCGM') on 18th November 1989 authorizing the operation of the flour mill. He also relies upon the electricity bills as well as the Intimation Receipt issued by MCGM on 1st January 2021 in the name of the Maharashtra Shiv Shakti Flour Mill, as well as the renewal of the factory permit issued by the MCGM.

3. He submits that he was constrained to file the suit to restrain the Respondent from dispossessing him, as the Respondent had allegedly visited the premises and threatened and assaulted his son. An FIR, lodged in this regard is annexed at page 39 of the Appeal Memo. Referring to the impugned Order, he submits that, learned Judge had erred in rejecting the Appellant's prayer for interim injunction restraining dispossession.

4. Learned Advocate for the Respondent submits that he is the real brother of the Appellant. He admits that all the documents stand in the name of the Appellant but contends that he has purchased the premises and is presently in possession thereof. He requests the appointment of a Commissioner to visit the premises and ascertain the present factual position.

5. Upon being asked to produce any documents evidencing

ownership or possession of the suit premises, the Respondent sought time to file a reply and to place certain photographs on record. He, however, admits that all documents stand in the name of the Appellant.

6. In these circumstances, I find that the impugned Order deserves to be set aside, as the Appellant has prima facie established his possession of the suit premises. Whether such possession is lawful or unlawful can be determined at the trial stage.

7. Relying on *Babban Anantrao Naik v/s. Sau. Pramila Uttamrao Yenare & Anr.*¹ wherein it was held that for the purpose of granting temporary injunction, the fact of possession alone is the relevant factor, and whether such possession is lawful or not cannot be the subject matter of inquiry. Reliance is also placed on *Rame Gowda (Dead) by LRS v/s. M. Varadappa Naidu (Dead) by LRS & Anr.*² wherein the Court held that possession must be given due weightage while considering an application for interim relief. The Appellant is therefore entitled to interim relief, restraining the Respondent from disposing him from the suit premises.

8. In the present case neither possession of the Appellant was taken into consideration nor any reasoning or finding was given by

1 2011 (6) All MR 15

2 (2004) 1 SCC 769.

the Trial Court to disallow interim relief.

9. In view of the above, the Order dated 18th September 2024 is set aside.

10. Interim Application No.15055 of 2024 is allowed in terms of prayer clause (a).

11. Appeal from Order and Interim Application stand disposed of accordingly.

(KAMAL KHATA, J.)