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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.685 OF 2014
IN
NOTICE OF MOTION NO.1164 OF 2013
IN
L.C. SUIT NO.1707 OF 2012

WITH
NOTICE OF MOTION NO.822 OF 2014
IN
APPEAL FROM ORDER NO.685 OF 2014
IN
NOTICE OF MOTION NO.1164 OF 2013
IN
L.C. SUIT NO.1707 OF 2012

M.C.G.M.	...Appellant
V/s.	
Ushadevi T. Rajbhar	...Respondent

Mr.J. Reis, Senior Counsel with Ms.M.R. Bhoir for the Appellant –
B.M.C.

Mr.B.S. Shukla for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 23RD NOVEMBER, 2015.

P.C. :-

1. By this appeal from order the appellant has impugned the order dated 14th August, 2013, passed by the City Civil Court, Greater Mumbai, allowing the notice of motion filed by the respondent (original plaintiff). By the said notice of motion the plaintiff had applied for

temporary injunction against the Corporation from demolishing the suit premises viz. room no.7, admeasuring 18 ft. x 20 ft. pursuant to the notice dated 30th April, 2013 issued by the Assistant Engineer.

2. Mr.Reis, learned senior counsel appearing for the appellant submits that one Shyamlal Rajbhar was staying in hutment no.7 along with his wife and two sons i.e. Tahsildar and Rajesh. He submits that the said Shyamlal Rajbhar as well as his wife expired. It is submitted that the Municipal Corporation has already made the allotment in respect of the said premises to Rajesh Rajbhar as per the eligible list of the original resident. Mrs.Sonia Shyamlal Rajbhar has given an affidavit and declaration dated 27th August, 2004 stating that she has transferred her right and title of the property owned by her late husband Shyamlal Rajbhar to his son Rajesh Rajbhar. He submits that the Municipal Corporation thus cannot make any allotment of another alternate premises to the original plaintiff who is claiming through her husband Talsildar Rajbhar who expired. He submits that the structure occupied by the respondent is on the plot which is required urgently for the purpose of its beautification. He submits that the other allottees have already vacated the premises.

3. Mr.Reis, learned senior counsel for the appellant submits that the husband of the respondent was not occupying any structure and was staying with Shyamlal Rajbhar. In support of this

submission, learned senior counsel placed reliance on the voter's list prepared in the year 1995 and would submit that the names of Shyamlal Rajbhar, Sonia Shyamlal Rajbhar, Tahsildar Rajbhar and Rajesh Rajbhar are shown at the same address.

4. It is submitted by learned senior counsel that the said Shyamlal Rajbhar was staying with his family members in hutment No.7 and the alleged accommodation is issued in respect of the said structure.

5. Mr.Shukla, learned counsel appearing for the respondent on the other hand submits that the husband of the respondent was occupying another structure. In support of this submission, he placed reliance on some of the documents annexed to the plaint and more particularly the receipt issued by Life Insurance Corporation Limited in the name of Ushadevi Rajbhar.

6. He submits that though various documents were produced by the respondent before the learned officer of the Municipal Corporation, who had issued a notice to the respondent to prove her case and to show that the notice itself was issued by the Municipal Corporation in respect of another structure, none of the documents have been considered by the learned officer of the Municipal Corporation. He placed reliance on the impugned order passed by the City Civil Court dated 14th August, 2013 and submits that the trial has

already begun before the learned trial Judge. He submits that the witness of the Municipal Corporation is under cross-examination. He submits that the issue as to whether the husband of the respondent was occupying another premises i.e. other than the premises which were occupied by Shyamlal Rajbhar or not will have to be gone into in the suit filed by the respondent. He submits that since the husband of the respondent was in possession of the premises prior to 1st January, 1995 without offering any alternate premises to the respondent, Corporation cannot evict the respondent.

7. A perusal of the action paper produced by learned senior counsel for the appellant prima-facie indicates that Rajesh Rajbhar, who had applied for alternate accommodation has mentioned his address as hutment no.6. It is however, the case of the Municipal Corporation that the said Rajesh Rajbhar was staying with Shyamlal Rajbhar in hutment no.7 and the alternate premises were offered to him in lieu of premises no.7. On the other hand, it was the case of the appellant that the notice issued by the Municipal Corporation under section 314 of the Mumbai Municipal Corporation Act was in respect of different structure and not the structure which was occupied by Shyamlal Rajbhar and others.

8. A perusal of the papers prima-facie indicates that both parties are not able to show conclusively as to which structure was

occupied by Shyamlal Rajbhar as well as the deceased husband of the respondent. Some of the documents produced by the Municipal Corporation indicates that the said Shyamlal Rajbhar was in possession of hutment no.6 or no.7 whereas the documents produced by the respondent indicates that *prima-facie* the husband of the respondent was occupying the hutment having different numbers. Learned senior counsel for the Municipal Corporation has not produced the copy of the order passed by the learned officer while deciding the notice under section 314 of the Mumbai Municipal Corporation Act. A perusal of the order passed by the learned trial Judge *prima-facie* indicates that the learned trial Judge has not dealt with the documents produced by the respondent (original plaintiff).

9. There is no dispute that the trial has already begun. The cross-examination of the witness of the Municipal Corporation has commenced. In my view, for the reasons set out aforesaid, it would not be proper to interfere with the order passed by the learned trial Court at this stage. The rival contentions of both the parties about the identity of the structure which was in possession of Shyamlal Rajbhar or the deceased husband of the respondent will have to be proved by leading oral evidence before the learned trial Court. Since the matter is at the stage of cross-examination, I am of the view that no interference with the order passed by the learned trial Court is

warranted at this stage. It is made clear that this Court has not expressed any views on merits of the matter and all the contentions raised by both the parties are kept open.

10. The learned trial Court is directed to dispose of the suit expeditiously and not later than six months from the date of the parties producing a copy of this order. The respondent shall not create any third party rights and/or shall not carry out any construction till the disposal of the suit.

11. The appeal from order is accordingly disposed of.

12. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)