

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

**FIRST APPEAL NO.107 OF 2015
WITH
CIVIL APPLICATION NO.265 OF 2015
IN
FIRST APPEAL NO.107 OF 2015**

Suman Atmaram Ingalkar .. Appellant

vs.

Municipal Corporation of
Greater Bombay and Ors. .. Respondents

Mr.H.S.Venegaonkar for the appellant

Mr.A.K.Nandanwar for the BMC

Mr.Anil Rao for the respondent no.2

**CORAM : K.K.TATED, J.
DATED : 18/03/2015**

PC:

1 Heard the learned counsel for the parties.

2 This First Appeal is preferred by plaintiff challenging the judgment and decree dated 22.12.2014 passed by Bombay City Civil Court, Mumbai in L.C.Suit No.753 of 2008 dismissing the plaintiff's suit.

Few facts of the matter are as under:

3 The appellant plaintiff filed L.C.Suit No.753 of 2008 challenging the notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 29.05.2007 issued by respondent Corporation and order dated 14.2.2008 passed by Assistant Commissioner G/South Ward. The Corporation by their notice dated 29.5.2007 called upon the plaintiff to remove unauthorised construction of structure with B.M.Wall and Ac sheet roof with ladi coba mezzanine floor admeasuring (1) 32'0" x 21'9" x 14'0" (2) 32'0" x 7'6" x 7'6".

4 Plaintiff replied the notice under section 351 of the Mumbai Municipal Corporation Act by letter dated 4.6.2007 and placed on record several documents. After considering the documents, the Assistant Commissioner G/South Ward held that the plaintiff failed to prove the existence or authorisation of the notice work prior to datum line 1.4.1962 and called upon the plaintiff to remove the said structure immediately.

5 Being aggrieved by the said notice dated 29.5.2007 under section 351 of the Mumbai Municipal Corporation Act, 1888 and order dated 14.2.2008 passed by the Corporation, plaintiff filed L.C.Suit No.753 of 2008 in the Bombay City Civil Court, Mumbai. That suit was dismissed by the Trial Court. Hence, the present Appeal.

6 The learned counsel for the plaintiff submits that though the plaintiff placed on record several documents to show the existence of the suit structure on or before the datum line, those documents were

not considered by the Trial Court. He submits that the Trial Court in paragraph 12 of the impugned judgment and decree referred to several documents produced by the plaintiff. Those documents were exhibited in the Trial Court. At the time of passing the impugned judgment and decree dated 22.12.2014 the Trial Court did not consider all the documents and held that plaintiff failed to establish existence of the suit structure prior to the datum line.

7 The learned counsel for the appellant submits that as the Trial Court failed to consider the documents on record, the impugned judgment and decree requires to be set aside, holding that the notice under section 351 of the Mumbai Municipal Corporation Act, 1888 issued by respondent Corporation dated 29.5.2007 and order dated 14.4.2008 passed by Office of the Corporation are illegal and not binding on the plaintiff.

8 On the other hand, the learned counsel for respondent no.2 vehemently opposed the present First Appeal. But after arguing for some time, he fairly considered that though the Trial Court in paragraph 12 of the impugned judgment referred to several documents but same were not discussed and or considered at the time of passing impugned judgment and decree. He fairly submitted that instead of admitting the present First Appeal and keeping pending for final hearing, matter may be remanded to the Trial Court for fresh hearing after considering all documents on record.

9 The learned counsel for the respondent Corporation also

vehemently opposed the present First Appeal. He submits that at the time of passing the order dated 14.2.2008, Assistant Commissioner has considered each and every document. He submits that the appellant failed to produce any document to show the existence of the suit structure before the datum line. Hence, there is no substance in the present First Appeal.

10 I have heard both the sides at length. There is no dispute that the plaintiff has placed on record several documents and the same were mentioned by the Trial Court in paragraph 12 of the impugned judgment and decree. Though the same were on record, the Trial Court without considering all those documents passed impugned judgment and decree. Some of the documents like Exhibit 19, 21, 23 and 24 show that they were issued before 1961. Therefore, in the interest of Justice, it is necessary to remand the matter to the Trial Court for rehearing.

11 Considering these facts, following order is passed:

- A) First Appeal is partly allowed.
- B) Judgment and decree passed by Trial Court dated 22.12.2014 in L.C.Suit No.753 of 2008 is set aside and matter is remanded to the Trial Court for fresh hearing on the basis of documents and evidence available on record.
- C) Trial Court is directed to decide L.C.Suit No.753 of

2008 as early as possible but in any case on or before 30.6.2015.

D) Till the final disposal of L.C.Suit No.753 of 2008, parties are directed to maintain status quo as on today.

E) No order as to costs

F) In view of dismissal of First Appeal No.107 of 2015 on its own merits, nothing survives in the Civil Application . Same is dismissed as infructuous.

(K.K.TATED, J.)