

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

**FIRST APPEAL NO.108 OF 2015  
WITH  
CIVIL APPLICATION NO.266 OF 2015  
IN  
FIRST APPEAL NO.108 OF 2015**

Prabhadevi Paper Mart  
Through Proprietor: Dhirajkaria .. 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.752 of 2008 dismissing the appellant's suit.

Few facts of the matter are as under:

3 In the present proceeding, the respondent Corporation issued notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 29.5.2007 in respect of unauthorised construction of structure with brick masonry wall and G.I.Sheet wall and ladi coba mezzanine floor therein adm. 26'3" x 10'10" x 14'0" or ht. as shown in sketch.

4 Plaintiff replied the notice under section 351 of the Mumbai Municipal Corporation Act by letter dated 4.6.2007 relying on several documents. Thereafter the Assistant Commissioner G/South Ward passed order dated 14.2.2008 holding that the plaintiff failed to prove the authorisation of the structure or its existence prior to the datum line and called upon the plaintiff to remove the notice structure. Hence, plaintiff filed L.C.Suit No.752 of 2008 challenging the notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 29.05.2007 and order dated 14.2.2008 passed by Assistant Commissioner G/South Ward.

5 The learned counsel for the plaintiff submits that though the plaintiff placed on record several documents to show the existence of the suit structure prior to the datum line, same were not considered and or referred by the Trial Court in judgment. He submits that the plaintiffs placed on record deed of assignment dated 18.9.1991 Exhibit 14, licence issued by the Municipal Corporation in the name of Mause Ali Sahebzada in respect of the suit premises Exhibit 17. He submits

that the Trial Court in paragraph 13 of the impugned judgment referred several documents filed and exhibited by the plaintiff. He submits that the Trial Court only considered rent receipt placed on record by the plaintiff and held that person who issued the same i.e. Henry failed to prove her authority for issuing those rent receipts. He submits that the impugned judgment and award passed by Trial Court is required to be set aside only on the ground that Trial Court has not considered all the relevant documents produced by them and Exhibited like Ex.14 and Ex.17 etc.

6 On the other hand, the learned counsel for respondent no.2 defendant no.2 vehemently opposed the present First Appeal. After arguing for some time the learned counsel for the defendant no.2 fairly admitted that though the documents were placed on record by the plaintiff and exhibited by the Trial Court, it seems that same were not considered by trial court at the time of passing impugned judgment and decree. He submits that instead of admitting this First Appeal, this Hon'ble Court be pleased to remand the matter to the Trial Court for considering the documents placed on record by the plaintiff and exhibited and decide the matter on its own merits as early as possible.

7 Considering the submissions made by the learned counsel for the plaintiff and defendant no.2, I am of the opinion that in the interest of Justice, it is necessary to remand the matter to the Trial Court for deciding afresh on the basis of documents on record. Hence, following order:

- A) First Appeal is partly allowed.
- B) Judgment and decree passed by Trial Court dated 22.12.2014 in L.C.Suit No.752 of 2008 is set aside and matter is remanded to the Trial Court for fresh hearing on the basis of documents on record only.
- C) Trial Court is directed to decide L.C.Suit No.752 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.752 of 2008, parties are directed to maintain status quo as on today.
- E) In view of above order in First Appeal No.107 of 2015, nothing survives in the Civil Application. Same is dismissed as infructuous.
- F) No order as to costs

**(K.K.TATED, J.)**