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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 223 OF 2015
IN
SECOND APPEAL NO. 353 OF 2008

Surendra M.Uppal ... Applicant

Vs.

The State of Maharashtra Through
The Sub-Divisional Officer and others ... Respondents

Mr.Vadan Bodke i/b Chitnis Vaithy & Co., Advocate for Applicant.
Mr.Sandeep Shinde a/w Ms.Sharmila Kaushik, G.P. for Respondents
No. 1 to 3 – State.
Mr. S.M.Kamble, Advocate for Respondents No. 4 & 5.

CORAM : R. G. KETKAR, J.
DATE : 21st APRIL, 2015

P.C. :

. Heard Mr.Vadan Bodke, learned Counsel for the applicant, Mr.Sandeep Shinde, learned G.P. for respondents No. 1 to 3-State and Mr.S.M.Kamble, learned Counsel for the respondents No. 4 & 5 at length.

2. This is an application for direction to the Municipal Commissioner of Ulhasnagar Municipal Corporation (for short 'Corporation') to decide the application made by the applicant for construction of compound wall without going into the issue of title with respect to the suit property.

3. In support of this application, Mr.Bodke submitted that

respondent No.1 in Second Appeal has instituted suit for declaration of his ownership rights as also for the declaration that defendants 1 to 3 have no right to transfer the suit land to defendants No. 4 & 5 or any other person without giving an opportunity to put forward his case as also for perpetual injunction restraining defendants No. 4 & 5 from interfering/disturbing possession of the plaintiff over the suit land and/or making any development to the said land in any manner.

4. The learned trial Judge dismissed the suit. Aggrieved by that decision, plaintiff preferred appeal. By order dated 18/01/2008, the learned District Judge set aside the trial Court's judgment and decree and decreed the plaintiff's suit. The learned District Judge declared that defendants have no right to interfere with the possession of the plaintiff over the suit property bearing plot No.596, sheet No. 75, Ulhasnagar admeasuring 1790 sq.yards. It was further declared that defendants No.1 to 3 have no right to transfer or allot the suit property to defendants No. 4 to 6 or to any other person. The learned District Judge declared that plaintiff is the owner and is in lawful possession of the suit property and restrained the defendants from interfering/disturbing possession of the plaintiff over the suit property.

5. Mr.Bodke submitted that though the Second Appeal is admitted and decree passed by the learned District Judge is not stayed till date. He has tendered the undertaking of the Constituted

Attorney of respondent No.1 to the effect that respondent No.1-plaintiff will construct the boundary wall around the suit property at his own costs and expenses without prejudice to his rights and contentions in the present appeal. Respondent No.1 has further given undertaking to the effect that in the event, Second Appeal is decided against him, he will remove boundary wall already constructed by him at his own costs and expenses without claiming any equities. Undertaking given by respondent No.1 is accepted.

6. No reply is filed opposing the application.

7. It appears that the Corporation by communication dated 19/01/2015 informed the original plaintiff that the documents submitted by him for permission are not traceable. Respondent No.1 was called upon to produce the original documents or to apply afresh along with ownership documents.

8. Mr. Kamble, upon taking instructions, states that in view of the decision of the District Court which is not stayed, the Corporation will not insist for the ownership rights of the plaintiff and will consider the application for constructing the building plan in accordance with law.

9. In view thereof, respondent No.1 shall apply afresh for construction of compound wall.

10. Mr. Shinde learned G.P. states that respondents No. 1 to & 3 will file written submissions to the application proposed to be

filed by the applicant. If such application is filed by the applicant, the same shall be served in advance on the respondents No.1 to 3. Respondents No. 1 to 3 will be at liberty to file their written submissions within 2 weeks from the date of the application.

11. The Corporation will consider the application as also written submissions and take decision in accordance with law without insisting for title deed of the applicant.

(R. G. KETKAR, J.)