

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10647 OF 2014

Jayanti Nagardas Rathod & Ors.	..	Petitioners
VS.		
Amum Builders	..	Respondent

WITH
WRIT PETITION NO. 5744 OF 2014

Amum Builders	..	Petitioners
VS.		
Suleman A. Dadi	..	Respondent

Ms Sonal i/b. Zohair H. Zaidy for Petitioners in WP 10647 of 2014 and for Respondent in WP No. 5744 of 2014.

Mr. P. S. Dani – Senior Advocate with Mr. Anil Gala, P. M. Shah, Pawan Kumar, M. R. Tanna and Neel Gala for Petitioners in WP No. 5744 of 2014 and for Respondent No. 1 in WP No. 10647 of 2014.

CORAM : M. S. SONAK, J.
DATE : 13 AUGUST 2015

P.C. :-

1] At the request of the learned counsel for the parties, both these petitions are taken up for disposal together.

2] The challenge in writ petition no. 10647 of 2014 is to the order dated 29 October 2014, by which the Trial Court has appointed a Court Commissioner to inspect the location of the suit premises and other matters. This was at the behest of the plaintiffs Amum

Builders in RAE & R Suit No. 1628/5893 of 1982 with Obstructionist Notice No. 5 of 2007.

3] In writ petition no. 5744 of 2014, instituted by the aforesaid plaintiff Amum Builders, the challenge is to the order dated 24 January 2014, by which the Trial Court has rejected the plaintiffs application for leave to examine City Survey Officer or Architect or Photographer for the identification of the suit premises, prior to the plaintiffs themselves stepping into the witness box.

4] In writ petition no. 10647 of 2014, Mr. Baiju Rathod, the petitioner no. 7 (original obstruction no. 57), has filed an affidavit on behalf of the petitioners therein to state that the structure known as Rathod Chawl, which according to them, is in existence prior to execution of the lease deed dated 8 February 1961 is standing behind Dadi House on the plot bearing Survey No. 191-A, Hissa No. 1 (part), Survey No. 197 Hissa No. 18 (part), situated at IRLA Society Road, Vile Parle (West). Ms Sonal, learned counsel for the petitioners in writ petition no. 10647 of 2014 confirms that the Rathod Chawl is indeed located upon the suit property with reference to the consent decree dated 15 June 2006. However, it is the contentuion of Ms Sonal that though the Rathod Chawl may be located upon the suit property, the consent decree does not cover

the petitioners, in the sense, that in pursuance of the consent decree dated 15 June 2006, the petitioners cannot be ordered to be evicted or any of their rights affected. In short, therefore, the contention of Ms Sonal is that this is really a matter of interpretation of the terms of the consent decree dated 15 June 2006.

5] In view of the aforesaid affidavit dated 13 August 2015, there is really no necessity for appointment of any Court Commissioner or examination of any Architect or Surveyor prior to the plaintiffs stepping into the witness box. The order impugned in writ petition no. 10647 of 2014 accordingly is liable to be set aside and the order which is impugned in writ petition no. 5744 of 2014 is not liable to be interfered with.

6] Accordingly, the impugned order dated 29 October 2014 in writ petition no. 10647 of 2014 is set aside. Similarly, writ petition no. 5744 is dismissed.

7] There are already orders to decide the suit expeditiously and the same shall be complied with. This is because, the petitioners in writ petition no. 10647 of 2014 point out that they are required to pay mesne profits and delay in disposal of the suit is therefore occasioning very serious prejudice to them. That apart, the Hon'ble

Apex Court in its order dated 4 January 2011, on the basis of joint prayer of the parties has already directed disposal of the suit in an expeditious manner.

8] The two writ petitions are accordingly disposed of in the aforesaid terms.

(M. S. SONAK, J.)

Chandka