

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.407 OF 2015
WITH
CIVIL APPLICATION NO.524 OF 2015**

Natvarsinh Ramsinh Rathod ... Appellant
vs.
Fatehsinh Mohansinh Chauhan and Others ... Respondents

Mr. A.P. Kulkarni i/b. Mr. Manoj Badgujar, for the Appellant.
Mr. B.D. Joshi, for Respondent No. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **7th DECEMBER, 2015**

P.C.:

. This Appeal is filed against the order dated 20th December, 2014 passed by the learned Civil Judge, Senior Division, Dadra and Nagar Haveli, Silvassa below application (Exhibit 5).

2. The Appellant/original Plaintiff filed a suit for declaration, possession and permanent injunction in respect of the land which is a part of Survey No. 182/2/1 admeasuring 490 sq. mtrs. at Silvassa as per the description of the suit property mentioned in the plaint. The Defendants have purchased a larger part of the land which is

surrounded to the plot of the Appellant. It is the case of the Appellant that the Defendants/Respondents have encroached upon his land as they are constructed the building for a Mall on the north side of suit property. It is the case of the Appellant that the trial Court though has passed the order granting temporary injunction against the Defendant Nos. 1 to 3 restraining them from further construction on the suit property till disposal of the suit, the Respondents/Defendants even after this order, started constructing further. It is the contention of the Appellant that, earlier there was no electric transformer but now the Defendants have put on the transformer on the suit land and carrying out further constructing activity irrespective of the order of the Court. Thus, there is breach of the order of the Court. He submitted that till today no electricity connection is given. The learned counsel for the Appellant further submitted that the injunction was granted as the Defendants were carrying out unauthorized construction. He pointed out that the observations of learned Civil Judge that, if a blanket injunction is granted against Defendant No. 1 then it will amount to dispossessing Defendant No.1 from suit property without conducting inquiry or trial, is not correct. He submitted that learned Judge has erred in holding that Defendant No. 1 is in possession of suit property.

3. All these facts can be considered at the time of deciding the application under Order 39 Rule 2A of the Code of Civil Procedure.

4. The learned counsel for the Respondents/Defendants defended the order passed by the trial Court. He submitted that the Respondents have not violated the order passed by the Court and they have not constructed further. The electricity is given to the Respondents by the electricity board prior to the order on the suit.

5. Though there is finding against the Appellant, the order of injunction is granted in his favour and the Defendants are restrained from constructing further on the suit land. Therefore, the finding given by the learned Civil Judge of the trial Court is obviously *prima facie* will not come in the way at the time of deciding the suit finally after appreciating the evidence on merits. Secondly, if at all there is breach of the order of the trial Court, then as it is a violation of the interim order, it is necessary for the Appellant to move before the trial Court for breach of the interim order under Section 39 of the Code of Civil Procedure. I am informed by the learned counsel for the

Appellant, he has moved an application accordingly under Order 39 Rule 2A of the Code of Civil Procedure before the trial Court and still it is pending.

6. In view of this, I do not find any necessity to pass order in this matter. The Appeal is disposed of with the aforesaid observation.

7. All the contentions raised by the parties are kept open.

8. In view of above, the Civil Application stands disposed of.

(MRS.MRIDULA BHATKAR, J.)