

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 950 OF 2015
WITH
CIVIL APPLICATION NO. 2663 OF 2015 IN F.A. NO. 950 OF 2015**

Amrtulal Ramkaran Pasi ... Appellant/Applicant
vs.
The Municipal Corporation of Greater
Mumbai & Ors. ... Respondents

Mr. Rajendra K. Yadav, Advocate for the appellant/applicant.
Mrs. M.R. Bhoir, Advocate for the respondents?BMC.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **AUGUST 28, 2015**

P.C.:

Admit. By consent, the Appeal is heard finally and disposed of at the stage of admission.

2. This First Appeal is filed against the judgment and order dated 23rd March, 2015 passed by the learned Judge of the City Civil Court, Greater Mumbai in Suit No. 1109 of 2009. By the said order, the appellant/plaintiff has filed the suit for declaration that the notice dated 14th May, 2009 issued by the respondent/Corporation in respect of suit room is bad in law and malafide and thereby also claimed injunction against the demolition of the suit structure against the respondent/Corporation. The said suit is dismissed on merit and therefore, this Appeal.

3. The learned counsel for the appellant submitted that the judgment passed by the learned Judge of the City Civil Court is erroneous, as the learned Judge has not considered the important document, i.e., ration card, which was issued in favour of appellant/plaintiff prior to 01.01.1995. He further submitted that the notice is issued in the name of some other person and not to the appellant, though he is occupying the suit room since 01.01.1995. He submitted that the respondents/defendants did not file the written statement, however, the appellant in examination-in-chief has specifically stated that the document, i.e., ration card, which shows that he is occupying the suit room from 1992 was not taken into account in the judgment. He further submitted that the appellant is occupying the said room since 1995 and the respondents though did not defend the suit properly, the suit was erroneously dismissed. He submitted that the learned Judge ought to have accepted the averments in the plaint when they are not denied by the respondents/defendants and ought to have decreed the suit.

4. The learned counsel for the respondent/Corporation while opposing this Appeal submitted that a confusion is created by the appellant/plaintiff in respect of suit plot whether it is 40D or 40B. The ration card is issued in respect of room no. 40D and the address given in the suit is in respect of room no. 40B in Dosa Compound. The learned counsel relied on the

cross examination of the appellant which was recorded on 14th January, 2015.

5. Perused the order, record and proceedings so also the evidence of the appellant. In paragraph 10 of the judgment, the learned Judge has given the list of documents which are produced by the appellant/plaintiff. It is true that in the list, the learned Judge has not mentioned about the ration card. However, this being the Appellate Court and the Appeal is continuation of the suit, this Court can consider the ration card. In the ration card on the right hand side, the date mentioned is 20th September, 1992, however, the said date is in respect of old ration card which was issued then and as pointed out by the learned counsel for the respondent, the address mentioned in the ration card is of 40D, Rasool Jiva Compound, however, in the plaint he has given as 40B, Dosa Compound, Thus, this ration card cannot be considered as document which was issued in respect of suit premises in the year 1992. Moreover, the impugned notice, which is under challenge, was issued not to the appellant but name of some other person is shown. This shows that other person might have been occupying the suit room and subsequently, the appellant may be occupying the room. The finding given by the learned Judge of City Civil Court that the appellant was given an opportunity to produce the documents before BMC and thus were

considered by BMC and the finding was given that it is unauthorized construction and hence notice of demolition was given. This finding is well reasoned. After considering the documents produced herewith and as none of the documents show that the structure was standing prior to 01.01.1995, the First Appeal is dismissed.

6. In view of dismissal of First Appeal, Civil Application does not survive and hence, the same is accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)