

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.702 OF 2015

with
CAA/855/2015

M/s.Varad Realtors

... Appellant/applicant

Vs.

Shri Prakash Shantaram Ambike & ors.

... Respondents

Mr.A.S. Khandeparkar i/b Khandeparkar & Asso. For Appellant
Mr.R.S. Datar for Resp. No.1

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 31st AUGUST, 2015

P.C.:

1. Admit. By consent of the parties, appeal called out and heard finally at the stage of admission itself.
2. This appeal filed by Respondent No.7, who is a Developer, is a counter claim in Suit No.261 of 2013 which is filed at exhibit 126. Exhibit 126 was moved by respondent No.7 for injunction against the plaintiff and Kalyan Janata Sahakari Bank Ltd. that they should not obstruct the development process in respect of Indira Niwas. This application exhibit 126 was rejected by the learned Joint Civil Judge, Senior Division by order dated 4.8.2014.

3. The learned Counsel for the appellant has submitted that admittedly the plaintiff is not residing in the premises which is at Indira Niwas. He submits that Indira Niwas is at present partially demolished. The demolition has started in 2013 and the building is in dilapidated condition. He further submitted that the plaintiff is not residing in the flat in Indira Niwas but he is unnecessarily obstructing the said premises. He further submitted that respondent No.8 Bank should also not come in the way of development and therefore, he prayed for injunction.

4. The learned Counsel for the respondents has opposed the appeal and submitted that the appellant / respondent No.7 cannot ask this relief which is beyond the relief claimed in the counter claim. He further submitted that this relief is in the nature of mandatory injunction which is rightly not granted by the trial Court.

5. Perused the order passed by the trial Court at exhibit 126 and the report of the Court Commissioner. The status of the respondent No.8 Bank in the suit is not explained as to why the bank is made a party as a defendant in the suit/counter claim. The report of the Court Commissioner discloses that the plaintiff is in possession of the flat and at the time of the visit of the Court Commissioner, his family members were present and some utensils were kept in the said flat. Considering this and the order at

exhibit 174, the possession of the plaintiff in the flat or in the premises in Indira Niwas is prima facie held to be in the affirmative. Respondent No.7 Developer is trying to seek possession of the suit flat under the garb of mandatory and prohibitory injunction.

6. Under such circumstances, the order passed by the trial Court cannot be faulted with. Hence, the appeal is dismissed.

7. In view of the dismissal of the appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)