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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.30879 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.30882 OF 2015

Rajesh S. Gohil ...Appellant
V/s.
The Municipal Municipal Corpn. Of Gr.Bombay & Anr. ...Respondents

Mr.Girish Godbole i/b Mr.Rajendra Yadav for the Appellant.

Mr.J. Reis, Senior Counsel with Mr.A.V.Diwate for the Respondent –
B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 8TH DECEMBER, 2015.

P.C. :-

1. By this appeal from order the appellant has impugned the order passed by the learned trial Judge on 11th November, 2015 refusing to grant any *ad-interim* relief on the ground that the appellant (original plaintiff) had not produced any valid document to indicate his lawful or long standing possession over the suit premises. The Municipal Corporation had issued a notice under section 314 of the Mumbai Municipal Corporation Act (MMC Act) on 6th April, 2013 to one Kuril Chandrikaprasad Budai which was replied it on the letter head of Kuril Chandrikaprasad Budai but signed by the appellant. In response to the said notice, the appellant contended that he was in

possession of the suit structure by virtue of an affidavit dated 20th January, 1994 which was executed by the said Kuril Chandrikaprasad Budai thereby handing over vacant and peaceful possession of the suit structure in favour of the appellant.

2. It was the case of the appellant before the trial Court that though the said writing was executed by the said Kuril Chandrikaprasad Budai on 20th January, 1994 recording the handing over of vacant and peaceful possession of the suit structure to the appellant, the appellant and the said Kuril Chandrikaprasad Budai were carrying on the business jointly in the suit structure. It is also the case of the appellant that there was an understanding between the appellant and Kuril Chandrikaprasad Budai that though the suit property would remain in the name of Kuril Chandrikaprasad Budai, the appellant also shall be entitled to claim right in the suit property.

3. The learned designate officer has passed an order disbelieving the documents filed by the appellant. The appellant filed the suit in the Bombay City Civil Court, challenging the notice issued by the Municipal Corporation and also the order passed by the learned designated officer.

4. Mr. Godbole, learned counsel for the appellant submits that the learned designate officer has not considered some of the documents produced by the appellant and has passed the impugned

order mechanically. He invited my attention to the affidavit dated 20th January, 1994 alleged to have been signed by the said Kuril Chandrikaprasad Budai and also the original receipt issued by the Municipal Corporation showing the name of Kuril Chandrikaprasad Budai. The said receipt is dated 11th July, 2000.

5. Pursuant to the orders passed by this Court on 17th November, 2015 and 23rd November, 2015, directing the Municipal Corporation to produce the original files in respect of the alleged circular referred in Exhibit "B" to the plaint showing the name of Kuril Chandrikaprasad Budai, Mr.Reis, learned senior counsel for the Municipal Corporation produced two original files for perusal of this Court. The inspection of those files was also given to the learned counsel for the appellant in Court. In the said files produced by the Municipal Corporation across the bar, the Municipal Corporation has also produced a copy of Ration Card dated 1st February, 2000 in the name of Chandrikaprasad Budai jointly with another name.

6. Mr.Reis, learned senior counsel for the Municipal Corporation submits that the appellant has not produced any document establishing possession of the appellant prior to the cut off date of 1st January, 2000. He submits that even the said circular receipt which was annexed at Exhibit "B" is after the cut off date. He submits that the so called affidavit relied upon by the appellant of 20th

January, 1994 would not establish the possession of the appellant as on the cut off date of 1st January, 2000. He submits that though an opportunity was given to the appellant to produce the documents prior to 1st January, 2000 and though some of the documents were produced by the appellant, none of the documents would indicate that the appellant was in possession of the suit structure prior to 1st January, 2000. He submits that the Municipal Corporation was therefore, justified in issuing the notice under section 314 of the MMC Act for removal of the structure which was claimed to be in possession of Kuril Chandrikaprasad Budai. He submits that even documents now relied upon are in the name of Kuril Chandrikaprasad Budai are after cut off date.

7. I have repeatedly called upon the learned counsel for the appellant to produce any document to show that the suit structure was constructed prior to 1st January, 2000, but the learned counsel for the appellant is unable to produce any document even at this stage to show possession of the appellant in respect of suit property prior to 1st January, 2000 and only placed reliance on the alleged writing dated 20th January, 1994. Though the notice was issued by the Municipal Corporation to the said Kuril Chandrikaprasad Budai, he did not come forward to file any response to the notice issued by the Municipal Corporation nor produced any document. In my *prima-facie* view

merely on the basis of such alleged affidavit dated 20th January, 1994 which was alleged to be on stamp paper of Mr.B.M. Agarwal, Advocate, the appellant cannot claim to be in possession of the suit structure prior to 1st January, 2000. If according the appellant he was in possession from 20th January, 1994 and was in possession on the cut off date, the appellant could have produced such documents to show his established possession on the cut off date for the perusal of the Municipal Corporation and of this Court.

8. Insofar as the case of the appellant that he was carrying out the business jointly with Kuril Chandrikaprasad Budai is concerned, in my prima-facie view the contention of the appellant is contrary to the alleged affidavit dated 20th January, 1994 in which the appellant has claimed to have acquired exclusive vacant and peaceful possession of the suit structure from the said Kuril Chandrikaprasad Budai. Even the documents produced by the appellant before the designate officer of the Municipal Corporation, before the learned trial Court and in the present proceedings also prima-facie indicate that each of such documents were in the name of Kuril Chandrikaprasad Budai which admittedly are subsequent to the cut off date. In my prima-facie view, the appellant has thus not made any case for grant of interim relief or for seeking interference with the refusal of the ad-interim order granted by the learned trial Court.

9. Mr.Reis, learned senior counsel for the Municipal Corporation submits that the appellant cannot be allowed to continue in possession of the suit structure which falls on the foot path. He submits that if the appellant is able to produce any proof at the time of trial that his structure was in existence prior to 1st January, 2000 and is able to prove that he is eligible to claim any permanent alternate accommodation, the same can be considered by the learned trial Court.

10. For the reasons stated aforesaid, in my view the appeal is devoid of merits and is accordingly dismissed.

11. In view of dismissal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)