

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11780 OF 2015

Mahesh Ram Daryanai and another

.. Petitioners

Versus

Mansukh Raghmal Vazirani

.. Respondent

Mr. O. G. Nagwekar, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 3rd DECEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 23.10.2015 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order the application Exh.12 filed by the Plaintiff for appointment of the Court Commissioner and the grant of temporary injunction came to be allowed and the Court Commissioner by way of Architect H. G. Samant was appointed to visit the site and to take photographs of the suit premises and also to take measurement of the suit premises and to submit report as to the actual position of the suit premises. The Trial Court has also granted injunction restraining the Defendants from creating third party interest in the suit premises i.e. flat on the ground floor admeasuring 500 sq.ft. in the building situated on plot No.29-C, situated at the Sindhi Immigrants Co-operative Housing Society

Ltd. Chembur, Mumbai-400 071.

2. The suit in question being RAE Suit No.59 of 2015 has been filed for eviction of the Defendants and for possession of the suit premises for demolishing the same and reconstructing a building thereon. It is the case of the Plaintiff that the Defendants are only entitled to 500 sq.ft. However, by carrying out additions and alterations, they have extended the suit premises without the permission of the Plaintiff and the Municipal Corporation. It is the case of the Plaintiff that though notice was issued to the Defendants through an advocate to permit the Plaintiff to inspect the suit premises, the Defendants obstructed the inspection of the suit premises. It is the case of the Plaintiff that the building is in a dilapidated condition and is therefore, required to be pull down and a new building to be constructed. It is the case of the Plaintiff that he is ready to accommodate the Defendants in the new construction. In so far as injunction is concerned, the Plaintiff has expressed an apprehension that the Defendants would create third party rights in respect of the suit premises. The Trial Court has considered the application and has by the impugned order dated 23.10.2015 allowed the same, both as regards the appointment of the Court Commissioner as also grant of injunction. In so far as appointment of the Court Commissioner is concerned, the Trial Court has held that since the Defendants have denied the inspection of the

suit premises to the Plaintiff, the Court Commissioner is required to be appointed so as to report as regards the actual position prevailing on site. In so far as the grant of injunction is concerned, the Trial Court was of the view that to avoid further complications, it would be just and proper to grant injunction and has accordingly granted the same. It appears that in so far as the grant of injunction is concerned, the said relief is granted in view of the statement made on behalf of the Defendants. Since the appointment of the Court Commissioner has been sought in view of the fact that the suit has been filed under Section 16(1) of the Maharashtra Rent Control Act, 1999, the Trial Court was of the view that it would be proper to appoint a Court Commissioner so as to report as regards the exact status of the structure in question. In my view, therefore, no case for exercise of the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]