

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

***APPEAL FROM ORDER NO.914 OF 2014
WITH
CIVIL APPLICATION NO.1105 OF 2014
IN
APPEAL FROM ORDER NO.914 OF 2014***

Puspan Narayan Nair

..Appellant

Vs.

Uday Pratap Bind s/o Manilal Bind
& Ors.

..Respondents

....

Mr. Nadir Khan for the appellant .

Mr. Raje Balakrishna K for respondent No.1.

....

CORAM : N.M. JAMDAR, J.

DATED : 14 MARCH 2016

P.C.:

. This appeal challenges the order dated 28 November 2013 passed by the by the City Civil Court rejecting the Notice of Motion No.3873/2013. The notice of motion was taken out by the appellant for an injunction against the respondent for not disturbing his possession in the suit property, in the suit filed by him for declaration and injunction against the respondent. The suit property is a hut , which is situated in the slum area of Antop Hill, Wadala, Mumbai, on a land belonging to the Government.

2. It is the case of the appellant that he was put in possession of the property by defendant Nos.1 and 2 under a Memorandum of Understanding and Power of Attorney executed by him for which the appellant paid an amount of Rs.50,000/- and also additional amount of Rs.1 Lakh. It is his contention that the appellant was residing since the year 1996.

3. The so-called Memorandum is not registered. The learned City Civil Court Judge has recorded that the said hut was jointly owned and possessed by Manilal and respondent No.3, who is his wife. Respondent No.3 is residing in the hut alongwith her children. She has produced ration card, passbook, Aadhar Card etc. The appellant has not produced any document to show that he is residing in the suit property since 1996. The learned City Civil Court Judge has noted that the Memorandum may have been created only in view of the pending case of domestic violence. The learned City Civil Court has recorded that prima facie the hut is in possession of the respondents. This is a possible view to be taken on the basis of the material and it cannot be said that the discretion used is perverse. There is no protection in favour of the appellant since the year 2013.

4. In the circumstances, the appeal cannot be entertained and is accordingly dismissed. In view of dismissal of appeal, civil application does not survive and is disposed of.

5. It is clarified that what is observed in the impugned order and the present order are prima facie observations.

(N.M. JAMDAR, J.)