

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 19 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 4 OF 2016
IN
FIRST APPEAL NO. 19 OF 2016

Rajendra Balkrishna Ghosalkar

.....Appellant

V/s.

Shri. Shakti Co-op Hsg. Soc. Ltd
& anr.

.....Respondents

* * * * *

Mr. V.B. Rajure, Advocate for the appellant.

Mr. Rajeev Matkar, Advocate for the respondents.

Coram :- Smt. R.P. SondurBaldota, J.

27th April, 2016.

P.C. :-

1). This appeal is directed against the judgment and decree dated 23rd December, 2014 by which the Bombay City Civil Court dismissed the appellant's suit for injunction *simplicitor* to restrain the respondents from putting up a wall in front of his shop and/or blocking his ingress-egress to it.

2). The appellant is the member of respondent no.1, Society. Respondent no.2 is a partner of the appellant. He however, supports respondent no.1 in the litigation. The suit premises is a shop

admeasuring 22.9 sq.mts situate at Survey No.20 (part) CTS No.509 (part), named as Shri Shivshakti Enterprises, Vaishadpada No.1, Santoshi Mata Mandir, Kurar Village, Malad (East), Mumbai-400 097. The structure of the Shop is adjoining to the compound wall of respondent no.1, Society. There is no dispute that the suit structure is an unauthorised structure. According to the appellant, access to the shop is only through the compound wall of respondent no.1, Society. The access claimed through the property of the Society is a strange access. The appellant has to climb over the compound wall with the height of 5 ½ ft to get into his shop. It appears that he has kept a movable iron ladder for the purpose. The appellant, there is no other opening or access to his structure. The shutter of the shop opens on the side of the property of the Society. The appellant claims that, there cannot be a shutter on any other side of the shop because on the two sides of the shop, there are other structures and on the rear side, there is a compound wall constructed by Mumbai Municipal Corporation with the height of 4 ½ ft. Beyond that, at a short distance there is the forest wall with the height of about 10 ft.

3). The Bombay City Civil Court dismissed the suit on the ground that the appellant had failed to establish his legal right to the access to his shop from the compound of the Society. Perusal of the plaint shows that, there is infact no right claimed by the appellant except the right as a member of the Society to use the common area of the Society. It is not his allegation that, the Society has placed any restraint upon him from using any of the common areas of the Society. The Bombay City Civil Court held that, the appellant has not pointed out any legal right to use the property of respondent no.1 as an access to the suit

premises. Further, since the suit premises is undisputedly unauthorised, it does not give rise to any right, except right of protection against forcible dispossession therefrom. The Bombay City Civil Court, also found that in the plaint, the appellant does not even claim any easementary right. Further, there is no evidence of any easementary right available to the appellant. In these circumstances, there is no infirmity whatsoever in the impugned judgment and decree. Hence, the First Appeal is dismissed.

5). With dismissal of the First Appeal, the Civil Application does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)