

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

**FIRST APPEAL NO.339 OF 2016
IN
L.C. SUIT NO.1124 OF 2012
WITH
CIVIL APPLICATION NO.861 OF 2016**

Mr. Govind Sakharam Ubhe Appellant
vs.
M.C.G.M. & Anr. Respondents

**AND
FIRST APPEAL NO.340 OF 2016
IN
L.C. SUIT NO.1125 OF 2012
WITH
CIVIL APPLICATION NO.862 OF 2016**

Mr. Vijay Babu Shetty Appellant
vs.
M.C.G.M. & Anr. Respondents

Mr. Hemant Deshpande i/by Jitendra Shah, Advocate for the
Appellant/s.

Mrs. M.R. Bhoir alongwith Mr. S.K. Sonawane, Advocate for the
Respondents.

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

Date : 9th March, 2016

P.C.

1 This is a common order on the above two appeals, dismissing the appellant's suit to challenge the notice issued to the appellants by the respondent-Mumbai Municipal Corporation under Section 351 of Mumbai Municipal Corporation Act for vertical and horizontal extension to the respective suit premises. The description of the unauthorised vertical and horizontal extension alleged in the impugned notice is “unauthorised vertical and horizontal extension to the existing structure. Horizontal extension adm. (2.60 m, x 6.84 m.) with B.M. Wall and unauthorised mezzanine floor adm. (5.10 m. x 8.80 m.) with ladi coba slab and A.C. Sheet roof” and that in the 2nd appeal is :

- 1) unauthorised horizontal extension to the existing structure adm. (11.28 m. x 1.60 m) and W.C. with B.M. wall,
- 2) unauthorised vertical extension to the existing structure with ladi coba slab at 1st floor level and A.C. sheet roof adm. (8.65m.x7.16m.) and compound wall in front of premises with B.M. wall,
- 3) change of user from residential to commercial purpose.

The Bombay City Civil Court has dismissed the suit with a finding that the plaintiffs in both the suits have failed to produce

any evidence whatsoever of authorisation of vertical and horizontal extensions.

2 The contentions of the appellants in their reply to the notice under Section 351 of the Mumbai Municipal Corporation Act as well as in the suits was that the premises belong to MHADA. The appellants are the monthly tenants of the premises in question and as such have been in possession of the premises for a substantially long time. It was next contended by them that the premises have been in the same condition ever since they came to occupy the same.

3 Respondent no.2 MHADA did not appear before the court despite service of summons. Respondent no.1, Mumbai Municipal Corporation, appeared but did not file any written statement to contest the suit. According to the appellants, in the absence of any written statement on the part of respondent no.2-the owner, the trial court could not have held that the alleged extensions are unauthorised.

4 In my opinion non-contest by both the respondents will not entitle the appellants to the decree in the suit. It is necessary for the appellants to establish that the alleged extensions to the suit premises are authorised extensions. Undisputedly, the appellants have not been able to produce any evidence of authorisation of the extensions. As regards

respondent no.2 being the owner of the structures in question, it was open for the appellants to examine the concerned officer of respondent no.2 to establish that respondent no.2 had authorised extensions to the suit structures. Thus, there is no infirmity whatsoever with the impugned orders. Hence, the First Appeals are dismissed.

5 In view of dismissal of the First Appeals, the Civil Applications No.861 of 2016 and 862 of 2016 do not survive, the same are accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)