

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order (ST) NO. 12078 OF 2016
with
Civil Application (st) No.12080 of 2016

1.Mr. Nathala Satyanandam Satyam
And Anr ...Petitioners
Versus
1.M/s. Maitree Construction & Ors. ...Respondents

Mr.Chetan C. Agrawal, for the Appellant.

Mr.Jitendra G.Damani, for Respondent No.1.

CORAM: G. S. KULKARNI, J.

DATED: 26th April, 2016

PC:-

1. By this appeal an ad-interim order dated 19 March 2016 passed by the learned Judge, City Civil Court at Dindoshi, Mumbai in a draft Notice of Motion in S.C.Suit No.2968 of 2015 has been challenged by Defendant Nos.1 and 2.

2. By the impugned order the learned Trial Judge has granted ad-interim relief in favour of Respondent No.1-Plaintiff in terms of prayer clause (a) and (b) which read thus:-

“a. This Hon'ble Court be pleased to pass an Order and Injunction restraining the Defendants, each one of them,

persons claiming under or through them from entering into Suit property i.e. CTS No.1230A/1/2 or any part thereof and keeping any goods inside the portion of the suit property demarcated by the City Survey Officer and shown in Plan Exhibit 'I' & Exhibit 'J'.

b. This Hon'ble Court be pleased to pass an order and injunction restraining the Defendants, each one of them and their family members from preventing or interfering in the Plaintiff's worker during erection of compound wall on boundary line of the Suit property so demarcated and shown in City Survey Plan Ex.'I' or in Alternative”

3. After the matter was heard for some time, the learned Counsel for Respondent No.1 fairly agrees that the Municipal Corporation and the City Survey Officer become necessary parties to the suit as instituted on behalf of Respondent No.1. The plans in question of construction being undertaken by Respondent No.1 admittedly are sanctioned by the Municipal Corporation. Further the report of the City Survey Officer is also relied upon by Respondent No.1/Plaintiff to assert the boundaries in respect of the plot. Admittedly, the dispute in the suit as regard the construction of a compound wall which would also fall within the plans which are sanctioned by the Municipal Corporation being a Planning Authority.

4. Considering these facts, it would be appropriate that

Respondent No.1 – Plaintiff is permitted to move a Chamber Summons seeking amendment of the plaint to implead the Mumbai Municipal Corporation and the City Survey Officer, Government of Maharashtra as a party defendants to the captioned suit and thereafter the Notice of Motion is heard afresh. Learned Counsel for Respondent No.1/Plaintiff agrees that such a Chamber summons would be moved immediately on 29th April,2016.

5. Learned Counsel for the Appellants/Defendant Nos.1 and 6 has no objection for impleading these Authorities as party defendants. He submits that as far as the other defendants are concerned, they are not available in Mumbai, he would seek their consent and they would also not have any objection in this regard. Accordingly, the Respondent No.1/Plaintiff is permitted to file and present Chamber summons before the trial Court for passing formal order on the same by the learned Trial Judge on 2nd May,2016.

6. Learned Counsel for Respondent No.1 has pointed out the urgency of the matter inasmuch as the occupation certificate in respect of the construction being undertaken by Respondent No.1 is held up for want of a compound wall. Learned Counsel for Respondent No.1, therefore, submits that the Notice of Motion for the ad-interim reliefs as prayed for

therein is required to be heard at an early date so that there is no prejudice be caused to the Respondent No.1/Plaintiff. The request is appropriate.

7. The learned Trial Judge shall take up the hearing of the Notice of Motion after the service of the Notice of Motion and the proceedings of the suit on the newly added parties and consider the same for passing ad-interim orders as prayed for in the Notice of Motion, on or before 7th May 2016. All contentions of the parties are expressly kept open.

8. As the Notice of Motion is required to be heard afresh in the light of the above observations, the impugned order is required to be set aside and it is accordingly set aside.

9. The Appeal from Order is disposed of in the above terms. No order as to costs.

10. Civil Application would also not survive and the same is accordingly disposed of.

11. Parties to act on the authenticated copy of this order.

(G. S. KULKARNI,J.)