

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

**FIRST APPEAL NO.1313 OF 2013
IN
L.C. SUIT NO. 2345 OF 2008**

Mr. Suresh Bheemraj Jain @ Kothari Appellants
& Ors.

vs.

The Municipal Corporation of Greater Respondents
Mumbai & Ors,

Mr. H.P. Pandey, Advocate for the Appellants.

Ms. M.R. Bhoir, Advocate for respondents no.1 to 4.

Mr. Sushant Desai alongwith Mr.Pratik Shah alongwith Priyanka
Variath i/by Vigil Juris for respondents no. 6 and 7.

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

Date : 26th April, 2016

P.C.

1 This First Appeal is directed against the judgment and order dtd. 2nd April, 2013, by which the Bombay City Civil Court dismissed the appellants' suit for challenging the construction plans sanctioned by respondents no.1 to 4 and the I.O.D. issued on 24th June, 2002 to respondent no.5. The commencement certificate for the construction in accordance with the plans, which is also under challenge is dtd. 4th January,

2003. Prayer clause (b) seeks to restrain respondent no.1 from carrying on any construction in accordance with the plan sanctioned and directions to respondents no.1 to 4 to issue a stop-work notice to respondent no.5. Undisputedly, the appellants have no right or title whatsoever to the land in question. They claim to have “possessory right” to the land. They were allegedly occupying the land for a long time until their dis-possession in the year 2008. The appellants suit filed under Section 6 of the Specific Relief Act for recovery of possession on the ground that their dis-possession has been forcible is pending.

2 Ms. Bhoir, the learned advocate for respondents no.1 to 4 makes a statement that the building as per the plans sanctioned is already constructed and complete. The premises in the building have been sold to a third parties, who have been occupying the same for a long period by now.

3 The trial court dismissed the suit with findings that the appellants have failed to establish that the plans sanctioned, the I.O.D. issued and the commencement certificate issued allowing respondent no.5 to construct the building on the suit property is illegal and bad in law. The appellants have also failed to establish that respondent no.5 has no right to carry on construction on the suit property in accordance with the plans sanctioned and held the appellants are not entitled to seek

directions against respondents no.1 to 4 for issuance of stop-work notice.

4 There can be no infirmity whatsoever in the impugned judgment and decree, since the appellants seek no right to the suit property whatsoever. Mr. Pandey, the learned advocate for the appellants submits that respondent no.5 has also not been established any right to the suit property and as such will not be entitled to carry on the construction. Even if that were to be so unless the appellants establish their right to the suit property, there can be no relief in their favour of the nature as sought in the suit. Hence, the First Appeal is dismissed.

(Smt. R.P. SondurBaldota, J)