IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2164 OF 2015
IN
FIRST APPEAL NO.399 OF 2014

Mrs. Rita Anthony Murray : Applicants

In the matter of

Francis Norbert D'Souza and ors. : Appellants.
Versus
Mrs. Rita Anthony Murray and anr. : Respondents.

Mr. Chirag Mody a/w Ms. Anusha Jacob i/by DSK Legal for the Applicant/Original Respondent No.1.
Ms. Eventa A Gonsalves for the original Appellants.

CORAM : R. M. SAVANT, J.
DATE : 22nd June 2016

P.C.

1 The above Civil Application has been filed inter-alia for the reliefs that the Applicant be permitted to reconstruct the portion of the boundary wall of the suit property which has been demolished, for expeditious hearing of the above Appeal and to restraining the Appellants and Respondent No.2 from in any manner interfering and/or obstructing and/or hindering with the Applicant's exclusive possession of the suit property.

2 In the context of the reliefs sought it could be relevant to refer to the order dated 18/07/2003 passed by a learned Judge of the City Civil Court

in S C Suit No.3303 of 2003 i.e. the suit in question. In the said order it has been recorded that the Plaintiff i.e. the Applicant herein has sought mandatory relief of construction of part of the compound wall stated to be demolished by the Defendant Nos.1 to 3 i.e. the Appellants and the Respondent No.2 herein. The said relief has been rejected by the learned Judge of the City Civil Court by observing that the reconstruction cannot be allowed at the said stage. No doubt thereafter the suit has been decreed in favour of the Applicant/Plaintiff. But the above First Appeal came to be filed by the Defendants and an order of status quo came to be passed on 23/07/2014 by a learned Single Judge of this Court (R G Ketkar, J), it seems that Civil Application for stay filed by the Appellant came to be made absolute in terms of the said order thereby directing the parties to maintain status quo.

3 It is the case of the Applicant that after the decree came to be passed in her favour, she had put up the demolished portion of the wall, demolition of which was thereafter carried out by the Defendant Nos.1 to 3 and therefore she has sought the relief by way of prayer clause (a).

4 In the said context it is required to be noted that though the decree has been passed in favour of the Applicant i.e. the Respondent No.1 herein that she is permitted to reconstruct the demolished portion of the wall, the decree was never executed and in the above Appeal ad-interim order by

way of status quo came to be granted by a learned Single Judge of this Court R G Ketkar, J. Hence it is not possible to accept the contention of the learned counsel appearing for the Applicant/Respondent No.1 and therefore the relief by way of prayer clause (a) of the above Civil Application cannot be granted.

5 In so far as prayer clause (c) is concerned, the order of status quo is already in operation and in view thereof this Court does not see the necessity of passing any order in terms of prayer clause (c) .

6 In so far as prayer clause (b) is concerned, the Applicant/Respondent No.1 would be at liberty to apply for hearing of the above First Appeal in January 2017.

7 Hence no relief other than the limited relief stated above can be granted to the Applicant/Respondent No.1. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]