

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

**APPEAL FROM ORDER NO.784 OF 2015**

**Javed Akhtar Mohd. Hussain Siddiqui and ors.  
Through their brother and Constitute Attorney  
Eftikar Mohd. Siddhiqui alias Nepali : Appellants.  
Versus  
M/s. Sweet Angel Home Builders and ors. : Respondents.**

**Mr. E A Sasi for the Appellants.  
Mrs. Prabha Badadare for the Respondent Nos.2 and 3.**

**CORAM : R. M. SAVANT, J.  
DATE : 08<sup>th</sup> August 2016**

**P.C.**

1           The above Appeal from Order takes exception to the order dated 30/04/2015 passed by the learned Judge of the City Civil Court, Dindoshi, Goregaon, Mumbai by which order Notice of Motion No.813 of 2013 filed by the Appellants herein i.e. the original Plaintiffs came to be dismissed.

2           The Plaintiffs had filed the instant Notice of Motion for restraining the Defendants i.e. the Respondents herein from parking vehicles at the entrance of the Plaintiffs' factory being M/s. New Bharat Engineering Works. The Plaintiffs lay a claim to the property in question being CTS Nos.735 and 737 Hissa Nos.1 and 2 on the basis of their alleged long standing possession since the year 1972. The Defendants on the other hand claim to be the owners of the larger portion within which the Plaintiffs' plot of land is situated on the

basis of Deeds of Conveyance dated 26/04/2006 and 27/04/2009 executed by the original owners Bayramjee Jeejeebhoy Pvt. Ltd. and M/s. Heritage Estate Pvt. Ltd. The said larger area is comprised in CTS Nos.733-B, 734, 735, 735/1 and 2, 736 and 736/1 and 2 admeasuring 1373 sq.mtrs of village Oshiwara, BSD Andheri (W), Mumbai. It seems that on the larger plot of land there are slums and structures in respect of which larger area the Defendants are desirous of implementing a scheme by carrying out re-development of the property. It seems that prior to the instant suit, the Plaintiffs had filed S.C.Suit No.657 of 2012 for the same relief and based on the same cause of action. The Notice of Motion filed by the Plaintiffs in the said suit being Notice of Motion No.953 of 2012 was dismissed. The said suit was withdrawn by the Plaintiffs without seeking any liberty to file a fresh suit. The Defendants in respect of the said fact have relied upon the roznama of the said S.C.Suit No.657 of 2012. It is also the case of the Defendants that the Plaintiffs have made encroachment not only on the open space outside their structure but also have started encroachment on the adjoining plot of land being CTS No.735, Hissa Nos.1 and 2 and CTS Nos.736, 737/8/3. It is the case of the Defendants that the Plaintiffs are in possession of a structure admeasuring 400 sq.ft. It seems that the Defendants have also filed a suit being S.C.Suit No.1231 of 2011 against the Plaintiffs elder brother for restraining the Plaintiffs from making encroachment in the open space outside the structure wherein the Plaintiffs' factory M/s. New Bharat Engineering Works is situated. It is the case of the Defendants that it is

on account of the said suit filed by them that the Plaintiffs had filed the earlier suit being S.C.Suit No.657 of 2012 which was an attempt, according to the Defendants, on the part of the Plaintiffs to show that they are in possession of the larger area and not only the structure admeasuring 400 sq.ft. As indicated herein above, it is the case of the Plaintiffs that they are having long, continuous, exclusive possession of the property in support of which they seek to rely upon various documents.

3           The Trial Court considered the instant Notice of Motion and has dismissed the same by the impugned order dated 30/04/2015. The Trial Court was of the view that though the Plaintiffs claim larger area than 400 sq.ft. which claim is to the extent of 1351 sq.mtrs, the Trial Court was of the view that unless and until the suit is finally decided, it would not be clear as to the extent of land which is in possession of the Plaintiffs, as both the parties have not got measured the land in their respective possession. The Trial Court has observed that the Plaintiffs had previously filed S.C.Suit No.657 of 2012 which was withdrawn by them without any liberty to file a fresh suit and thereafter the instant suit was filed. The Trial Court has observed that if the Plaintiffs are claiming ownership over the suit premises by adverse possession, the Plaintiffs would have to prove their case by producing cogent evidence. The Trial Court has also observed that there are number of hutments in the larger area of the property and the Defendants are intending to develop the same. The Trial

Court has therefore observed that the Plaintiffs have not made out prima facie case and the balance of convenience also does not lie in favour of the Plaintiffs and accordingly rejected the Notice of Motion. It is the said order dated 30/04/2015 passed by the Trial Court which is taken exception to by way of the above Appeal from Order.

4            In the instant case it is required to be noted that the Plaintiffs have not placed any material on record at the prima facie stage to show as to how they have come in possession of the property and to what extent is their possession but have merely stated that they are in long standing possession. The Defendants on the other hand, as indicated above, lay a claim on the basis of the two conveyance deeds, which have been referred to in the earlier part of the instant order. The Trial Court having regard to the material on record was right in coming to the conclusion that neither the Plaintiffs have made out a prima facie case nor the balance of convenience is in favour of the Plaintiffs. In my view no fault would be found with the order passed by the Trial Court declining to exercise discretion in favour of the Plaintiffs.

5            No case for interference in the Appellate Jurisdiction of this Court is therefore made out. The above Appeal from Order is accordingly dismissed.

**[R.M.SAVANT, J]**