

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER NO. 924 OF 2012

Mr. Walter Thomas Kinny

...Appellant

Versus

Rosy Louis D'Silva & Ors.

...Respondents

.....

Mr. Sushil Upadhyay h/f Mr. A. M. Sarogi for the Appellant.

CORAM : G. S. KULKARNI, J.

DATE : 18th APRIL, 2016.

P. C. :

1. Heard learned counsel for the appellant on the admission of the appeal.

2. This appeal is preferred against the order dated 03.04.2012 passed by the learned Judge, City Civil Court at Mumbai whereby Notice of Motion No. 2775 of 2010 filed by the appellant/plaintiff seeking a temporary injunction against respondent Nos.1 to 5 from carrying out illegal construction in the open space between House Nos.126-F and 126-I situated at Waras Lane, Worli Koliwada, Mumbai is rejected. Admittedly the appellant/plaintiff is not the owner of the open space upon which a complaint of illegal

construction has been made in the suit. There is a finding of the learned Trial Court that there was no material placed on record as regards the construction and as to when the construction was completed. There is also no document placed on record to show that the construction is unauthorized or illegal. The learned Trial Court, in view of this observation, has declined to grant any mandatory injunctions as prayed in the Notice of Motion. The learned counsel for the appellant has reiterated the submission made before the Trial Court and recorded in the impugned order in support of this Appeal from Order. Admittedly the Appeal from Order is pending from July, 2012. There is no ad interim order passed in this appeal.

3. In the above circumstances and taking into consideration the observations made by the learned Trial Judge, in my opinion this Appeal from Order does not warrant any interference.

4. The suit is of the year 2010. It is quite possible that the suit itself must have been listed for disposal before the Trial Court.

5. The Appeal from Order is devoid on merits and is accordingly rejected. No order as to costs.

(G. S. KULKARNI, J.)