

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

CIVIL APPLICATION NO. 4065 OF 2016
IN
FIRST APPEAL NO. 1392 OF 2010

Morris Benny Kenny .. Applicant

In the matter between

Valerian Anthony Ferreria .. Appellant

Vs.

Shri Gangaram Jethiya Bandari & Ors. .. Respondents

Mr. Dr. Chandrachud a/w. Mr. R. L. Singh i/b M. V. Kini & Co. for the Appellant

Mr. Sudham Y. Amare for original Intervener.

Mr. Makrand G. Patil, AGP for the State.

Mr. Deepak Chitnis i/b Chiparikar & Co. for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th SEPTEMBER, 2016.

P. C. :

1. This application is preferred by the third party applicant seeking his impleadment in the First Appeal No.1392 of 2010 and further for protecting the easementary rights of the applicant, thereby restraining the appellant and respondents herein from demolishing and destroying the approach road/path leading to applicant's land/residence.

2. As stated in the application itself the applicant has previously also applied for his impleadment in the appeal by preferring Civil Application No. 2221 of 2015 and also for the similar relief of protecting his

alleged easementary rights while seeking stay to the order dated 30.01.2014. The said application came to be dismissed by this Court vide its detailed order dated 02.07.2015. The copy of that application and the order passed thereon is also produced on record along with this application. Perusal of the same reveals that all the contentions raised in this application are similar to the contentions raised in the said application and those contentions are decided on merits as the said application came to be rejected by the order passed by this Court on 02.07.2015. Applicant has not challenged the said order before higher Court. As a result, it has become final.

3. The only contention advanced is that, the earlier application was rejected as the applicant had not placed on record any document to show his right, title and interest in respect of the said road. Now, the reliance is placed on the map of the region from MMRDA to show the existence of the disputed road. However, as rightly pointed out by the learned counsel for the appellant the said map is dated 13.05.2013, whereas the road has come into existence subsequently in October, 2014. In such a situation, this document can hardly be of any help to the applicant to prove or substantiate his contention of easementary right of access over the said road.

4. Moreover, it is pointed out that the applicant has already filed

civil suit bearing No. 1992 of 2015 in the City Civil Court, seeking same relief of easementary right. In the said suit also, he has filed application for the interim relief which is also dismissed. Appeal from Order No. 804 of 2015 preferred against the said order is yet pending in this Court.

5. It is further pointed out that by the present application, the applicant is seeking impleadment in the First Appeal No. 1392 of 2010. Now, whatever decree is passed in that suit, which is challenged in this appeal, being the decree *in personem* between the parties thereto, the applicant, as such cannot claim any *locus standi* to be impleaded in the present appeal preferred against that decree.

6. Thirdly, by this application the applicant is raising grievance against the order passed in the Contempt Petition and the applicant is not asking or requesting the Court for impleadment in the said Contempt Petition.

7. Apart from and in addition to that, *prima facie*, also the applicant has not made out any case, as can be seen in the earlier order passed by this Court and as the application filed by the applicant in his independent suit filed in the City Civil Court being rejected already. Hence, it has to be raised that no case is made out by the applicant to get the reliefs which are claimed by him.

8. The application, therefore, stands dismissed.

9. The observations made in this order are only for the purpose of deciding this application and it is needless to state that they should not come in any way when the Trial Court decides the suit No. 1992 of 2015.

[DR. SHALINI PHANSALKAR-JOSHI, J.]