

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

**FIRST APPEAL NO.1878 OF 2013
IN
S.C. SUIT NO.5759 OF 2002**

Bhavanji Bhai Syamji Bhai Prajapati Appellant
Mumbai (Ori. Plaintiff)

Vs.

Smt. Vasantiben Ramniklal Bhuta Respondents
& Anr. (Ori. Defendants
1 and 2)

Ms. Deepa Ahuja alongwith Ms. Martina, Mr. Abhishek Shukla
i/by M/s Arun Sapkal & Co. for the Appellant.

Mr. Nainesh N. Amin, Advocate for Respondent no.2.

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

Date : 16th June, 2016

P.C.

1 This appeal is directed against the judgment and decree dtd. 13th August, 2013, by which the Bombay City Civil Court dismissed the appellant's suit.

2 The appellant had sought four reliefs in the suit filed by him. The first two reliefs are of declarations and the other two are of injunction. The four reliefs read as under :

(a) That this Hon'ble court be pleased to declare that the defendant cannot stop the plaintiff from enjoying the fresh air and light from windows and egress and ingress from door no.2 of the said room i.e. Room no.4, Sagar Apartment, Nagardas Road, Andheri (East), Mumbai – 400 069 as more particularly shown in Exhibit “A” hereto.

(b) That this Hon'ble court be pleased to declare that the act of defendant forcibly stopping the easement right of enjoying the fresh air and light from windows and egress and ingress from door no.2 of the said room i.e. Room No.4, Sagar Apartment, Nagardas Road, Andheri (East), Mumbai –400 069 by constructing brick masonry wall therein is illegal and unlawful.

(c) That this Hon'ble court be pleased to order and direct the defendant by mandatory order to demolish the wall constructed by defendant closing door no.2 and windows of the said room i.e. Room no.4, Sagar Apartment, Nagardas Road, Andheri (East), Mumbai – 400 069.

(d) That the defendants, his servants, agents and person/s claiming through him be permanently restrained by an order and injunction of this Hon'ble court from obstructing and/or enjoying the easement right of having fresh air and light from the windows and egress and ingress from door no.2 of the said room i.e. Room no.4, Sagar Apartment, Nagardas Road, Andheri (East), Mumbai – 400 069, save and except without following due process of law.

3 The brief statement of facts alleged by the appellant is that he is the tenant of the respondents in respect of the suit premises i.e. Room no.4, Sagar Apartment, Nagardas Road, Andheri (East), Mumbai. The room is part of a chawl consisting of six rooms. The suit premises has four windows and two doors. There is one main entrance door and one rear door of the four windows, three are on the western wall of the room and the fourth is on the northern wall. According to the appellant, the doors and windows have been in existence since the inception of the tenancy i.e. since the year 1958. The appellant has a direct access to his room from the road. There is an open space in front of that door and there are windows on that side. He had been enjoying air and light therefrom. Similarly there is a common passage on the side of the three windows.

4 The suit as filed originally was against one Ramniklal Bhuta. During pendency of the suit, he died and his heirs, the present respondents were brought on record. The appellant alleges that the respondents have their property and chawl attached to the wall of his room. Similarly four windows and a door of the room open into the respondent's property. There is some open space in front of the door and windows. In the second week of August, 2002, Ramniklal, the original defendant constructed a wall in such a way that the rear door of the room and the four windows, got closed. Thereafter despite request, the respondents have not removed the wall. Therefore, the plaintiff filed the suit in exercise

of his easementary rights to enjoy the premises.

5 The original defendant contested the suit contending that the suit room originally admeasured 11.2 sq. mtrs. and was situate at a considerable distance from the existing boundary wall between CTS Nos. 105 and 108. The appellant by carrying out illegal construction extended his room and trespassed over the open land between his tenement and the boundary wall. For that purpose, he has used the compound wall between the two properties. Then he tried to open a window into the boundary wall and also a door facing the northern side i.e. opening into the property of the respondents. Therefore there is no question of the original defendant doing any act constituting obstruction of easementary rights of the appellant.

6 The appellant examined himself in support of his case. The respondents examined respondent no.2 and a photographer. On appreciation of the evidence, the Bombay City Civil Court held that the structure of the appellant is illegal and unauthorised and that the respondents were entitled to take objection to the door and windows constructed by the appellant to his premises.

7 The Bombay City Civil Court found that the cross-examination of the appellant and the photographs produced by the parties in evidence showed that the appellant had carried out the construction upon compound wall of the respondents.

Consequently, his case of enjoyment of the easementary rights was not true. The respondents also produced the evidence of property card indicating the original area of the suit premises, which subsequently came to be increased by encroaching upon the open space. The witness of the respondents had deposed about the encroachment and illegal extension to the structure. He also deposed that the stone boundary wall was without any opening. This testimony of the respondents was not subjected to cross-examination. As such, there was no challenge to it. The Bombay City Civil Court also found that the evidence of the appellant was contrary to the documents produced by him. He gave no explanation for the allegations made by the respondents in the written statement. In his cross-examination admitted that the main door of the suit premises is towards western side and that the compound wall has been in existence since long. He also admitted the photographs produced by the respondents. On the basis of this evidence, the Bombay City Civil Court dismissed the suit. It also found that the appellant has not come to the court with clean hands and he had tried to mislead the court alleging that the extended structure to the suit premises was in existence since the inception of tenancy.

8 The photographs produced in evidence have been perused in the appeal. The photograph clearly show that the respondents have not only horizontally extended their room upto the compound wall but has also carried out vertical extension.

When the original defendant complained about the construction by the appellant, he had agreed to close the door and the windows opening into the respondents' property. When he failed to do so, the respondent had no option but to re-erect the boundary wall, which had been illegally broke open by the appellant.

9 The evidence before the court thus clearly establishes that the appellant came to the court with an absolutely false case. The so-called obstruction to his easementary rights is not on account of any illegal or unauthorised act on the part of the respondents. He has by his own action of unauthorised extension to his room tried to intrude upon the space of the property of the respondents and re-erection of the compound wall by the original defendant was only by way of protecting his own property. Therefore, the Bombay City Civil Court has rightly dismissed the suit with compensatory costs. The appellant has not raised even a single arguable ground to challenge the judgment and decree. Hence, the appeal is dismissed with costs quantified at Rs.10,000/-.

(Smt. R.P. SondurBaldota, J.)