

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1428 OF 2013
IN
SHORT CAUSE SUIT NO.1552 OF 2010
ALONGWITH
CIVIL APPLICATION NO.3829 OF 2013
AND
CIVIL APPLICATION NO.3830 OF 2013**

Mohomed Deen Mohamed Massi & Anr. Appellants

Vs.

M/s Kay Bee Developers (P) Ltd. & Anr. Respondents

Mr. Sagar G. Talekar, Advocate for the Appellants.

Mr. Rajeev Narula i/by Jhangiani Narula & Associates for Respondent no.1.

Mr. Arvind Aswani i/by Mr. J.G. Reddy, Advocate for Respondent no.2.

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

Date : 29th March, 2016

P.C.

1 This appeal is directed against the order dtd.14th August, 2014, by which the Bombay City Civil Court dismissed the suit filed by the appellants for an injunction simplicitor to restrain respondent no.1 from evicting them from the suit property or from creating any third party interest in respect of the suit property,

described in the plaint as CTS plot no.335 (part) of Dharavi Division, Dharavi Road, Dharavi, Mumbai.

2 The appellants claimed that their father and uncle were the owners of the suit plot of land. After the death of the father, the appellants and their uncle became the owners, though the property continued to stand in the name of the father and the uncle. After the death of the uncle, the appellants have become the owners of the land. According to them, the total area of the suit land is 8048.56 sq. mtrs. and the portions admeasuring 555.52 sq. mtrs. and 95 sq. mtrs is under encroachment.

3 Respondent no.1 has been redeveloping the property at City Survey Nos.344 (part), 343 (part) and 335 (part) pursuant to the permission for redevelopment granted by respondent no.2, the Slum Rehabilitation Authority. It denies that it has in any way encroached upon the suit property being plot no.335 (part). The respondents contend that the work of redevelopment is taken up after conducting the survey and demarcating the boundaries of the properties under redevelopment. On the request of respondent no.1, the Office of City Survey and Land Records had carried out the survey after giving due notice dtd. 7th February, 2009 to the appellants. On 22nd January, 2010, the demarcation of boundaries of the property for redevelopment was carried out. The appellants

have not challenged any of the reports of City Survey office. According to the respondents, the suit filed for simplicitor injunction without seeking any substantial reliefs is not maintainable.

4 On the pleadings between the parties, the trial court framed eight issues, out of which the first three issues were based on the objections to the maintainability of the suit. Since all the three issues have been answered in favour of the appellants, the same need not be considered in the present appeal. The issues framed on the merits of the rival pleadings, are issues no. 4 to 8, which read as follows:

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|---|---|--------------------|
| 4 | Whether defendant no.1 is entitled to develop the property which does not belongs to defendant no.1? | Does not survive |
| 5 | Whether the permission for development granted by 2 nd defendant be construed as permission to 1 st defendant to develop suit property? | In the affirmative |
| 6 | Do the plaintiffs prove to their title and possession over suit premises ? | Does not survive |
| 7 | Do the plaintiffs prove that defendant no.1 commenced demotion on the suit plot and interfere in the possession of the plaintiffs ? | In the negative. |

8 Do the plaintiffs prove that they are In the
entitled to the relief of permanent negative
injunction ?

Considering the findings on issues no. 4 and 6, that the same do not survive, these issues will also fall beyond consideration in the present appeal, since the finding does not prejudicially affect the appellants. By the findings on issues no. 5 and 6, the trial court has held that the appellants have failed to prove that respondent no.1 commenced demolition on the suit plot of land in interference with possession of the appellant and that there is due permission granted by respondent no.2 to respondent no.1 to redevelop the property.

5 The appellants examined their constituted attorney in support of their case and respondent no.1 examined one Babu Mahajan as it's witness. It was the allegation of the appellants that the respondents are trying to implement the redevelopment scheme on the suit plot of land which belongs to the appellants. The respondents contend on the other hand that the work of redevelopment is started on City Survey Nos. 344 (part), 343 (part) and 345 (part) after due demarcation of the same. The witness of the appellants in his cross-examination did not dispute the demarcation of the properties. On a query made to him, he stated that the appellants are not challenging the demarcation. He admitted that the survey had been carried out by Surveyor, Mr.

Parkar in his presence though he disputed report of Mr. Parkar. He also admitted that the report submitted by Mr. Parkar has not been objected to by the appellants. As per his evidence because the appellants were not satisfied with the report of Mr. Parkar, another Surveyor by name Mr. Udas, was appointed as Commissioner, pursuant to the order dtd. 28th February, 2012 passed in the suit. By that order, it was held that the report of Mr. Parkar did not properly mark the boundary of plot no.335 and 334 and hence one more survey was required. In the report of the second survey, Mr. Udas recorded that, there was clear demarcation of boundaries between C.S. No. 335 and 344 and the boundary was not disturbed in any way, though he reported that there was some encroachment on C.S. No.335 which indicated in green colour on the map. The City Civil Court noted from the cross-examination of the witness of the respondent that, even the report of Mr. Udas was not acceptable to them. They, however, have not taken any steps to challenge that report. The City Civil Court noted in detail, the manner in which the survey was carried out by Mr. Udas and the various documents referred to by him, to express its satisfaction as regards the survey. In view of the evidence of the survey, the Bombay City Civil Court found that the respondents had taken appropriate care before undertaking the work of redevelopment by getting the boundaries of C.S.No.344 demarcated.

6 As regards the other evidence on the alleged encroachment on the suit property, the City Civil Court found that the same was not satisfactory. The witness of the appellants admitted that there are various encroachers on the suit property. But surprisingly, the witness was not aware of the number of the structures of encroachment on the land and the particulars of the occupants residing therein. He stated that he was not even aware of the area of the land under encroachment. The evidence of this witness, therefore, was of no assistance to the appellants to establish any encroachment much less the encroachment by the respondents over their land. Respondent no.2 being a proper authority to grant permission for redevelopment of the land by issuing the letter of intent, there could be no doubt as regards the permission for redevelopment granted by respondent no.2 to respondent no.1.

7 Perusal of the impugned order, the pleadings of the parties, the depositions of the witnesses and the documentary evidence produced before the Court makes it clear that, there is no infirmity whatsoever in the impugned judgment and order. The appellants have clearly failed to establish that the activity of redevelopment undertaken by respondent no.1 is extended to their property. Besides, in the absence of filing of objections to the reports of survey by the office of City Survey and Land Records, the same

must be accepted. Thus, there is no issue arising for consideration of the Court in the First Appeal. Hence, the First Appeal is dismissed.

8 In view of dismissal of the First Appeal, Civil Application No. 3829 of 2013 and Civil Application No. 3830 of 2013 do not survive. The same are accordingly disposed off.

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