

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

Amk

**APPEAL FROM ORDER (STAMP) NO. 27639 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 27642 OF 2016**

Mrs. Dhanvanti Premasagar Seth]
Age-61 years, Occ.-Housewife,]
Indian Inhabitant, owner of Garage No.4,]
New Kavita Co-operative Housing]
Society Ltd., 10-B, Phirozshah Mehta]
Road, Santacruz (W), Mumbai-400054.] .. Appellant

Vs.

1. Municipal Corporation of Gr. Mumbai]
having their office at Mahapalika]
Building, Mahapalika Marg, Fort,]
Mumbai-400 001.]
2. The Designated Officer-(I),]
The Asst. Engineer, (B & F), H/W Ward,]
Municipal Corporation for Gr. Mumbai,]
having office at St. Martin Road,]
Bandra (West), Mumbai - 400 050.]
3. Mr. Chandan Pravin Gadda]
Age-65 years, Occ.- Business,]
4. Mrs. Kanchan Talkashi Gadda]
Age-63 years, Occ.- Housewife,]
Indian Inhabitant, both residing at]
Flat No.B-8, Nayan Nagar,]
Sai Santosh Building, Tuling Road,]
Nalasopara (E), Dist.-Thane.]
5. Mr. Ramesh Premji Vira]
Age-66 years, Occ.- Business,]
Indian Inhabitant, residing at]
Flat No.601, Dhiraj Residency,]
A-Wing, Sanskruti Bhavan,]
Opp.- Dhahanukar Wadi, Kandivali (W),]
Mumbai - 400 067.] .. Respondents

Mr. Jagdish N. Jayale for the Appellant.
Mrs. Madhuri More for Respondent Nos.1 & 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 6th OCTOBER, 2016.

ORAL JUDGMENT

1. This appeal is preferred against the order dated 27.09.2016 passed by City Civil Court, Borivali Sub-Division at Dindoshi, Mumbai in Draft Notice of Motion filed in Suit No. 2601 of 2016 thereby rejecting the ad interim relief to the appellant.

2. The submission of learned counsel for the appellant is that the said Suit and the Notice of Motion was filed seeking relief of injunction restraining respondent from taking any action in pursuance of the notice dated 10.05.2016 issued under Section 351 of the MMC Act and the order passed in pursuance of the said notice on 09.09.2016. It is urged that earlier also similar such notice was issued on 28.04.2010 and after the appellant filed reply to the said notice along with requisite documents, no further action is taken. However, now again at the instance of the landlord, the Municipal Corporation is bent upon taking action as the appellant is not ready for the re-development of the property, which landlord wants to do.

3. It is submitted that the appellant has approached the Trial

Court, therefore, seeking relief of interim injunction restraining the Municipal Corporation from taking any action of demolition of the suit structure, which is Garage No.4. However, the Trial Court has rejected the ad interim relief despite the fact that several documents, in support of the case of the appellant showing the existence and legality of the suit structure, were produced before the Trial Court. The only reason given by the Trial Court is that the appellant has not produced any document to show her right and interest in the suit property and, therefore, she has no *locus standi* to file the suit.

4. In this appeal, therefore, the learned counsel for the appellant has produced on record the agreement dated 14.09.1962 executed by the builder in favour of the mother of the appellant, Mrs. Kesarben Premji Vira showing that the suit property was allotted to her along with Garage No.4 in the year 1962 itself. As per the appellant, she is the daughter of the deceased Kesarben and respondent Nos.3 to 5 are the other legal heirs of deceased Kesarben. To substantiate further, she has also produced on record the photocopy of the Ration Card of deceased Kesarben to show that her name is appearing in the said Ration Card as the daughter. It is urged that, in view of the evidence, the Trial Court should not have refused the ad interim relief only on the ground that the appellant had no *locus standi* to file the suit without considering the documents which are produced in the case, coupled with the fact that respondent Nos.3 to 5,

who are the other legal heirs of deceased Kesarben, are not objecting to the appellant claiming possession and title over the disputed garage.

5. In my considered opinion, there appears some substance in the submission advanced by the learned counsel for the appellant that the Trial Court has not properly considered the documents produced on record and refused the ad interim relief on the ground which is totally untenable.

6. There also appears substance in the second ground, urged by learned counsel for the appellant that, in pursuance of the earlier notice issued under Section 351 of the MMC Act on 28.04.2010, the appellant has produced before the Designated Officer of Municipal Corporation all the relevant documents, which are produced in this Suit also, including the copy of the sanctioned plan, in which the existence of the garage is shown. Instead of taking any action on the said notice, apparently indicating that the said notice was dropped, now another notice dated 10.05.2016 was issued. The appellant has replied the said notice also on 04.06.2016 raising contention that she has already produced all the documents. It is urged that, in the order dated 09.09.2016, passed by the Designated Officer, however, it is stated that the appellant has not produced any documentary evidence to prove the authenticity of the structure. Learned counsel for the appellant submits that the appellant is ready to produce again all these documents, which are produced in this

appeal, including the copy of the sanctioned plan before the Designated Officer and after the perusal of those documents, the Designated Officer may pass a fresh order. Till then, the appellant's suit structure needs to be protected. Learned counsel for the appellant submits that the appellant is even ready to withdraw the suit and file a fresh suit, if required, after the fresh order is passed by the Designated Officer, after considering the documents of the appellant.

7. In view thereof, the appeal is allowed. The impugned order passed by the Trial Court refusing the ad interim relief to the appellant is hereby quashed and set aside.

8. The appellant is directed to produce all the relevant documents, including the copy of the sanctioned plan, before the Designated Officer of the Municipal Corporation, within a period of two weeks from the date of this order. The Designated Officer of the Municipal Corporation is directed to pass a fresh order after taking into consideration all those documents.

9. Thereafter, if there is any grievance for the appellant, the appellant is granted liberty to file fresh suit, with the necessary Notice of Motion, within four weeks from the date of the order of the Designated Officer.

10. Accordingly, the present suit stands disposed of with a liberty to the appellant as stated above to file fresh suit within four weeks of the order of the Designated Officer.

11. During this period, the respondent-Municipal Corporation is restrained from taking any action in pursuance to the notice dated 10.05.2016 issued to the appellant under Section 351 of the MMC Act and order passed thereon dated 09.09.2016.

12. In view of the disposal of the appeal, the civil application does not survive, hence stands disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]