

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

APPEAL FROM ORDER NO.297 OF 2016

ALONGWITH

CIVIL APPLICATION NO.379 OF 2016

IN

APPEAL FROM ORDER NO.297 OF 2016

M/s. Supreme India Constructions

.. Appellant

Versus

The Assistant Commissioner,

E Ward, Municipal Office Bldg.

10, Sankli Street, Byculla, Mumbai-400 008

and others

.. Respondents

Mr. R. A. Thorat, Senior Advocate i/by Mr. Sandeep Sharma for the Appellant.

Mr. Y. E. Mooman i/by Ms. Manisha B. Gawde, for the Respondent No.3.

CORAM : R.M. SAVANT, J.

DATE : 8th JUNE 2016

PC.

1. The order dated 10.09.2015 passed by the Learned Judge of the City Civil Court, Mumbai, is taken exception to by way of the above Appeal from Order. By the impugned order, the Notice of Motion being No.2151 of 2014 filed by the Appellant came to be dismissed.

2. The Appellant is the original Plaintiff who has filed the suit in question being LC Suit No.1668 of 2014. The suit has been filed for a declaration that the Defendant No.3 has illegally and unauthorisedly occupied the suit temple lying at Street No.28-30 situated at 4th Peerkhan Street, Sitaram Building, Nagpada Mumbai-400 008, for the relief that the Defendant Nos.1 and 2 by a permanent order be restrained from converting or changing the user of the suit temple building without prior consent of the landlord i.e. the Plaintiff herein. In the said suit, the Plaintiff filed the instant Notice of Motion and amongst the reliefs sought in the Motion, was the relief to restrain the Defendant Nos.1 and 2 by an order of injunction from converting or changing the user of the suit premises of the said temple building without the prior consent of the landlord i.e. the Plaintiff herein and the Defendant No.3 be restrained from making any application for converting the user of the suit temple building before the Defendant Nos.1 and 2. The Respondent No.3 herein is the tenant in one of the structures which is of the ownership of the Appellant herein who as indicated above is the original Plaintiff. In the context of the relief sought in the suit as well as motion, it would be apposite to refer to the description of the property in the plaint which as mentioned in paragraph 1 of the plaint. The said description is as follows :-

“the Sitaram Building and a Vithal Temple, standing thereon situated at 4th Peer Khan Street, bearing Plot No.49 of First Nagpada Estate of Improvement Trust of Bombay Loughton's Cadastral Survey No.1453 of Byculla Division and E Ward No.3491(12) and Street no.28-30 lying being situated at 4th Peerkhan Street, Sitaram Building, Nagpada Mumbai 400 008 (hereinafter referred to as “The Said Property”).”

In the said suit, the Respondent No.3 herein filed his written statement and prayed that the same be treated as reply to the Notice of Motion. The Trial Court considered the said Notice of Motion and passed a restraint order against the Defendants, in the absence of the Defendants. The Notice of Motion thereafter came up for hearing before the Learned Judge of the City Civil Court, who by the impugned order dated 10.09.2015 has dismissed the same. The principal ground on which the relief of restraining the Defendant No.3 from effecting change of user in respect of the premises in question is rejected is on the ground that the temple as claimed by the Plaintiff is in C.S. No.1454 as shown by the Plaintiff in the plan submitted by it with the Mumbai Repairs and Reconstruction Board, whereas the suit premises is situated on plot No.49 of First Nagpada Estate of Improvement Trust of Bombay Loughton's Cadastral Survey i.e. C.S. No.1453 of Byculla Division and E Ward No.3491(12) and street No.28-30 lying being situated at 4th Peerkhan Street, Sitaram Building, Nagpada Mumbai 400 008. On the said basis the Trial Court has observed that prima-facie there is no temple in C.S. No.1453 as claimed by the Plaintiff.

The Trial Court has further observed that prima-facie Plaintiff must establish that there is any idol of Lord Vithal in the temple/suit structure. The Trial Court lastly observed that nothing is brought on record to even prima-facie come to a conclusion that the acts complained of are committed by the Defendant No.3. The Trial Court therefore reached a conclusion that there is no prima-facie case in favour of the Plaintiff and that no loss would be caused to the Plaintiff, if the injunction is not granted.

3. The order of the Trial Court is sought to be assailed on the ground that the Trial Court has erred in coming to a conclusion that the temple is in C.S. No.1454 when it is in C.S. No.1353. The Learned Senior Counsel appearing on behalf of the Appellant seeks to place reliance on a document of the Municipal Corporation of Greater Mumbai which is a note prepared by the Superintendent of the MCGM, E-Ward, which is a note in respect of assessment to be made in respect of the property mentioned therein. The said note it seems was prepared in the context of the tax which was sought to be levied in respect of the property in question. It seems that the Plaintiff was claiming a concession on the basis that there is a temple in the property, whereas the tenor of the letter of the Defendant No.3 seems to be that no such exemption could be availed of by the Plaintiff as he is recovering rent from the Defendant No.3.

4. On behalf of the Defendant No.3 the certified copy of the extract from the Cadestral Survey Sheet No.265 has been produced in respect of the said C.S. No.1453 and C.S. No.1454. The said extract from the Cadestral Survey Sheet issued by the Superintendent of the City Survey and Land Records, Mumbai, ex-facie discloses that the temple is in C.S. No.1454 whereas C.S. No.1453 which is towards the West of the said C.S. No.1454 does not show the existence of any temple. The certified copies of the sheet in respect of C.S. No.1453 and C.S. No.1454 are also produced, which also show that in C.S. No.1454 there is a temple and that there is no temple in C.S. No.1453. Reliance was also sought to be placed on behalf of the Appellant on the register of the inspection of properties carried out during the year 1992-1993 in respect of property bearing E-Ward-3492-99. On behalf of the Respondent No.3, reliance is sought to be placed on the proposal for redevelopment submitted by the Plaintiff in respect of the property wherein the Respondent No.3 i.e. Defendant No.3 is shown as a tenant and his name appears in the certified list of tenants in respect of C.S. No.1453 Byculla Division, E-Ward-3492-99, known as Sitaram Bldg. Bldg. No.26/35, 3rd Peerkhana Street, Nagpada, Mumbai-400 008. It is on the said basis that the reliance placed on the assessment register which relates to E-Ward-3492-99 is sought to be dealt with by the Defendant No.3 to contend that the assessment register is not in respect of

the property which is in occupation of the Defendant No.3. However at the prima-facie stage the document which is clinching if one can say so are extracts from the City Survey Record which disclose that the temple is in C.S. No.1454 and not in C.S. No.1453. Hence, the finding of the Trial Court based on the said fact cannot be found fault with. In my view, therefore, no case for interference with the impugned order is made out. The Appeal from Order is accordingly dismissed.

5. In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to stand disposed of as such.

[R.M. SAVANT, J]