

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

APPEAL FROM ORDER 681 OF 2014

Sadanand Raghunath Tendolkar : Appellant.
Versus
Rafique Ali Arfan Ali : Respondent.

Mrs. Anjali R Shiledar Baxi for the Appellant.
None for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 06th June 2016

P.C.

1 The above Appeal from Order is arising out of the order dated 17/08/2013 passed by the learned Judge, City Civil Court, Greater Mumbai by which order the Application (Exhibit 17) filed by the Appellant original Defendant came to be rejected.

2 The said Application (Exhibit 17) has been filed by the Appellant/original Defendant seeking direction that the Plaintiff i.e. the Respondent herein be directed to pay compensation for the unlawful use of the suit property on the part of the Plaintiff and for appointment of Court Receiver. It was the case of the Defendant that the Plaintiff is occupying the area which is in excess of the area which the Plaintiff is entitled to occupy in terms of the agreement between the parties. The Trial Court has rejected the said Application on the ground that under Rule-1 Clause (a) of Order XXXIX of the

Code of Civil Procedure the Defendant would be entitled to such a relief only if the property in dispute is in danger of being wasted, damaged or alienated by one of the party or wrongfully sold in execution of a decree. The Trial Court has further observed that the Defendant i.e. the Appellant herein has utterly failed to prove any such fact so as to attract the aforesaid provision, and therefore held the Appellant disentitled to the relief claimed in the said Application (Exhibit 17).

3 In my view, having regard to the reasons mentioned by the Trial Court for rejecting the said Application (Exhibit 17), there is no merit in the challenge to the impugned order dated 17/08/2013. The above Appeal from Order is accordingly dismissed.

[R.M.SAVANT, J]