

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.605 OF 2015
IN
CIVIL REVISION APPLICATION NO.447 OF 2008**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Pradeep Havnur, Advocate for Applicants.

Mr. Makrand Kale i/b M.P.Vashi, Advocate for Respondents no.1 to 3.

Mr. Shailesh Chavan i/b Milind Deshmukh, Advocate for Respondent no. 5.

CORAM: R.G.KETKAR, J.

DATE : 13/01/2016

PC:

1. Heard Mr. Pradeep Havnur, learned counsel for the applicants, Mr Makrand Kale, learned counsel for respondents no.1 to 3 and Mr. Shailesh Chavan, learned counsel for respondent no. 5 at length.

2. By this application, the applicants have prayed for appointment of court commissioner for inspecting suit premise with a view to finding out illegal and unauthroised works carried out by the respondents.

3. Perusal of the trial Court's order shows that issue no.4 was framed by the learned trial Judge which is to the following effect:

“Does he further prove that the defendant has committed acts contrary to the provisions of clause (o) of Section 108 of the T.P. Act by removing a window in the suit premises and by putting up a door therein?”

and the finding recorded against that issue was in negative. In other words, the learned trial Judge held that the plaintiff did not prove that the defendants committed acts contrary to the provisions of clause (o) of Section 108 of the Transfer of Properties Act, 1882 (for short, 'Act') by removing a window in the suit premises and by putting a door therein.

4. As far as appellate court is concerned, perusal of the points framed by the appellate court does not show that any issue was framed as regards defendants committing acts contrary to the provisions of clause (o) of the Act.

5. In view thereof, the contentions raised in this application cannot be gone into in the present Civil Revision Application as it will amount to enlarging scope of Civil Revision Application.

6. In view thereof, liberty is reserved to the applicants to file suit on that ground if they are so advised. Subject to that, no case is made out for entertaining this application. Hence, Civil Application is rejected.

(R.G.KETKAR, J.)