

JPP

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

***APPEAL FROM ORDER NO. 229 OF 2016
with
CIVIL APPLICATION NO. 308 OF 2016***

Mr. Zahid Hussain Mirza. ... Appellant.

V/s.

Mr. Shahid Hussain Mirza Hasan Baig & Ors. ... Respondents

Mr. Surel Shah a/w. Vaibhav Awadhesh Singh for the Appellant.

Mr. Sandeep Pandey for Respondent 1.

Mr. Pankaj Kowli i/b. Suryakant Pise for Respondents 2 & 3.

CORAM : N.M. JAMDAR, J.

DATE : 4 APRIL, 2016.

P.C. :-

Heard learned Counsel for the parties. Admit. By consent, taken up for final disposal forthwith.

2. The Appellant who is the Original Defendant has filed this Appeal challenging the order passed by the City Civil Court, Mumbai dated 27 October 2015, partly allowing the Notice of Motion No. 3934 of 2007 in S.C. Suit No. 4248 of 2007 filed by the Respondents – Plaintiffs.

3. The Suit property is a building known as 'Fatima Manzil' constructed on plot of land bearing Plot No.42, admeasuring 552 sq. yards equivalent to 461.50 sq.metres bearing New Survey No. 9082 (part) and City Survey No. 1859 of Fort Division situated at building No.1-IC, Junction of Kawasji Patel Street and Gunbow Street, Fort, Mumbai – 400 001. The Notice of Motion was taken out by the Respondents to restrain the Appellant from dispossessing or creating any third party rights or parting with possession and appointment of Court Receiver. Notice of Motion has been disposed of by the impugned order restraining the Appellants by order of temporary injunction and appointment of Court Receiver by order passed on 22 December 2015. The Receiver has not yet taken possession.

4. Limited grievance is made by the learned Counsel for the Appellant at this stage is that the impugned order is passed without hearing the Appellant. He submits that as the Roznama would show on 29 January 2010 the present Notice of Motion was to be heard alongwith the Suit and thereafter, only the Notice of Motion was taken out by the Appellant in his Suit was being heard. The learned Counsel for the Respondents submitted that the Appellants have not paid the dues of the Municipal Corporation and therefore, property is likely to be attached. The learned Counsel for the Appellant states that the Appellant has paid all the arrears.

5. It is not necessary to consider the rival contentions on merits, as it is not controverted that the impugned order is passed without hearing the Applicant. So far the Court Receiver has not taken the possession. The learned Counsel for the Appellant on instructions states that the Appellant has no intention to create any third party rights or alienate the suit property and part with possession or transfer tenancies without seeking leave of the Court. The learned Counsel for the Respondents – Plaintiffs states that the prayer of the Plaintiffs which has been rejected by the impugned order should also be kept open. Considering the facts and circumstances, the prayer made is reasonable.

6. Accordingly, the Appeal is disposed of by the following order :-

(a) The impugned order passed on 27 October 2015 in Notice of Motion No. 3934 of 2007 is quashed and set aside. Notice of Motion No. 3934 of 2007 stands restored to file.

(b) As regard Clause (1) of the impugned order, the same is substituted by the statement made by the learned Counsel for the Appellant which is recorded above and is accepted.

(c) As regard remaining prayers in the said Notice of Motion, the Notice of Motion will be considered on its own merits.

(d) All contentions of the parties in that regard are kept open.

7. No costs.
8. Civil Application does not survive and is disposed of.

(N.M. JAMDAR, J.)