

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1032 OF 2016

Pradeep Laxman Ghivalkar

...Appellant

Versus

Laxman Vitthal Ghivalkar & Ors.

...Respondents

Mr. M.A. Khan, for the Appellant.

Mr. Vasim Siddiqui, i/b Mr. Kunal Bhanage, for the Respondents No. 1 & 2.

CORAM : G.S. KULKARNI, J.

DATE : 8th December 2016

ORDER :

1. Not on board. Taken on board on a praecipe as moved on behalf of the Appellant.

2. Heard the learned Counsel for the Appellant, learned Counsel for the Respondents No. 1 and 2 and learned Counsel for the Respondent No. 3-Corporation.

3. The impugned order is dated 15th November 2016 whereby the Notice of Motion No. 2476 of 2016 in L.C. Suit No. 492

of 2016 has been rejected.

4. The Appellant-Plaintiff had filed the said Notice of Motion praying that Defendants No. 1 to 3 be restrained from dispossessing him from space No. 3 at CSM Market, Phalton Road, Mumbai till disposal of the Suit. The Appellant-Plaintiff's contention is that he is conducting business of selling fish from 1971 at the suit space. At the same time, he admits that the licence in respect of this space in the concerned Municipal Market has been issued by the Respondent-Municipal Corporation and that the licence is issued in the name of Respondent No. 1 who is the father of the Plaintiff. It appears that the Respondent No. 1 intends to transfer the licence in favour of Respondent No. 2- his grandson and/or it is being transferred for a consideration under an agreement. This is being opposed by the Appellant-Plaintiff on the ground that it should be transferred in his name. It is also contended that such an agreement to transfer the license for consideration, would not be a valid transfer.

5. Having considered the nature of the grievance and the impugned order, it is clear that the issue is as regards transfer of the licence issued by the Municipal Corporation. The legal position is that

a licence would be issued by the Respondent Municipal Corporation to conduct the business in the Municipal Market as per the Rules which are framed by the Municipal Corporation. There is a dispute interse between the Appellant-Plaintiff-son and Respondent No. 1 father. If the rules permit the transfer of a licence by Respondent No. 1 in favour of any other person or for that matter Respondent No. 2 his grand son, surely the Appellant-Plaintiff cannot contend that it ought to be transferred in his name only on the ground that he was conducting the father's business. In any event any issue -touching the grant of licnecess is a subject matter falling within the powers of the licensing authority.

6. In my opinion, the contentions as urged by the Appellant surely would not assist the Appellant to seek a temporary injunction as prayed in the Notice of Motion. As to what was the legal right of the Appellant-Plaintiff to conduct the business, when admittedly, the licence was granted in favour of Respondent No. 1 and under what arrangement the Appellant-Plaintiff was undertaking the business and whether the Appellant can claim any vested rights are all issues which are required to be gone into at the hearing of the Suit. The Appellant-Plaintiff had miserably failed to make out a *prima facie*

case. The balance of convenience was wholly in favour of Respondent No. 1. I do not find any perversity in the impugned order as passed by the learned Trial Judge. The Notice of Motion has been rightly rejected. The Appeal is thus without any merit and is summarily rejected. No costs.

7. The Civil Application would also not survive and is accordingly, disposed of.

[G.S. KULKARNI, J.]