

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 11149 OF 2017
WITH
CIVIL APPLICATION ST NO. 11150 OF 2017

Ankush Rampravesh Yadav	...Appellant
<i>Versus</i>	
Prakash Krishna Shince & Anr	...Respondents

Mr Ram A Yadav, for the Appellant.
Mr Jagdish S Singh, for the Respondents.

CORAM: G.S. PATEL, J
DATED: 17th July 2017

PC:-

1. Heard.

2. There is no reason to interfere with the impugned order dated 20th March 2017 dismissing the Plaintiff's Notice of Motion. The Plaintiff sought appointment of a Court Commissioner to inspect and verify the suit premises and for a mandatory injunction directing the Defendants to reconstruct the front wall of the alleged upper portion of Room No. 63. The third relief was for a direction asking the Defendants to pay Rs. 3,000/- a month as rent to the Plaintiff for occupying this upper portion.

3. Before the Trial Court there was a great deal of confusion about the identity of the premises. The Defendants claimed to be occupying the premises No. 478. The Plaintiff claimed to be occupying Room No. 63. All these premises are in a slum. The Plaintiff was unable to show that the Defendants' premises No. 478 were atop Room No. 63. It is for this reason that the Trial Court concluded that there was nothing to show that the Defendants premises were on top of Room No. 63.

4. There are other ways the Plaintiff might have demonstrated his case in respect of the upper and lower structure.

5. In my view, the learned Judge is correct in holding that there was no *prima facie* case made out for any of these reliefs. The order for reconstruction in any case is a final relief. The prayer in regard to non-payment of rent is a matter that the Court will undoubtedly consider. I notice that in the plaint there is a prayer for possession and this will have to be read in conjunction with prayer (c) for interim relief, where the Plaintiff seeks payment of monthly rent as mesne profits. Whether or not this raises a jurisdictional issue is for the Trial Court to decide.

6. The Trial Court will decide the Suit on its own merits uninfluenced by the observations in the order under Appeal.

7. The Appeal is disposed of in these terms. There will be no order as to costs. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)