

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 967 OF 2013
IN
FIRST APPEAL NO. 1206 OF 2013

Mrs. Khurshid Khaja Jamal Khan .. Applicant
vs.
Smt. Mumtazbegum Sherbahadur Khan .. Respondent

Mr.D.S.Pagare for the Applicant-Appellant.

CORAM : M. S. SONAK, J.
DATE : 20 MARCH 2017.

P.C. :-

- 1] Heard learned counsel for the applicant.
- 2] It is the case of the applicant/appellant that there is no proper description of the suit property. In any case, the appellant is not disturbing the possession of the plaintiff over the suit premises. Further, it is the case of the appellant that the suit premises are situated in Survey No. 13, whereas the structure of the appellant is situated in Survey No.19. For this reason, learned counsel for the appellant, submits that the appellant has demolished the backside wall of the suit premises and in any case, the appellant cannot be directed to construct such wall.
- 3] The operative portion of the impugned judgment and order reads thus:
 - “1. The suit is decreed with costs.
 2. The defendant is restrained by perpetual injunction from disturbing peaceful possession of the plaintiff over the shop premises admeasuring 8.5'x9' more particularly described in

paras 1 and 5 of the Plaint, except by due process of law.

3. The defendant is directed by mandate to restore the back side wall of the suit premises with similar material as that of the other part of the suit premises within 2 months from today.

4. The defendant shall bare the cost of the plaintiff.

5. A decree shall be drawn up accordingly.”

4] Since, it is the case of the appellant/applicant that he is not disturbing the possession of the plaintiff over the suit premises, the direction at clause (2) above, obviously, cannot affect the appellant, at this stage. Therefore, there is no case made out for grant of any stay insofar as said direction is concerned.

5] Insofar as direction No.3, i.e., mandatory injunction to construct backside wall of the suit premises, at this stage, it will not be appropriate to insist upon the appellant to undertake such construction. However, the appellant is directed to deposit in this court an amount of Rs.10,000/- within a period of four weeks from today. The respondent, i.e., original plaintiff shall be at liberty to withdraw this amount and herself construct the backside wall of the suit premises with similar material, consistent with all other part of the suit premises.

6] If ultimately, the appeal succeeds, the respondent, will have to bring back this amount of Rs.10,000/- along with interest as may be determined by this court, at that stage.

7] The application for interim relief is accordingly, disposed of in the aforesaid terms.

(M. S. SONAK, J.)