

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER Stamp No. 947 of 2018  
WITH  
CIVIL APPLICATION Stamp No. 949 of 2018  
WITH  
CIVIL APPLICATION Stamp No. 2000 of 2018  
IN  
APPEAL FROM ORDER Stamp No. 947 of 2018

Iqbal Hussain Sultan Chaudhary .. Appellant.  
Vs  
Amirullah Mohammed Shafi Khan & Ors.. Respondents.

Mr. Afroz A. Siddiqui for the Appellant.  
Mr. Wasim Khan for Respondent No.1.

**CORAM : M.S. SONAK, J.**  
**DATE : 13<sup>th</sup> August, 2018.**

**P.C.:-**

1. Heard Mr. Siddiqui, learned counsel for the appellant and Mr. Wasim Khan learned counsel for the respondent No.1.
2. The challenge in this appeal is to the order dated 22/11/2017 made by the learned Trial Judge, dismissing Notice of Motion No. 2774/2017 in S.C. Suit No. 1708/2017 instituted by the appellant-plaintiff.
3. Mr. Siddiqui, learned counsel for the appellant submitted that the documents produced on record by respondent no.1-defendant

relate to room no.8 in the Chawl. He points out that there is no dispute whatsoever that the appellant is the owner of the entire Chawl and the land where the land is constructed. He points out that the learned Trial Judge has misconstrued the documents produced by respondent no.1, as also the submissions made in the written statement filed by respondent No.1 and on such basis rejected the appellant's notice of motion. He submits that there is ample material on record which indicates that respondent no.1 is attempting to encroach upon the portion of the Chawl in which respondent No.1 has no interest whatsoever. In these circumstances, Mr Siddiqui submits that the notice of motion taken out by the appellant ought to have been made absolute.

4. Mr Wasim Khan, the learned counsel for the respondent No.1, submits that it is the respondent No.1 who is in possession of the suit premises. He points out that in the plaint, there is no clear description of the premises. He points out that the respondent No.1 has already instituted a proceeding against the plaintiff and the Municipal Corporation, since it is the case of the respondent No.1 that his possession was being disturbed. Mr. Wasim Khan points out that there is no jurisdictional error or any serious illegality in the prima

facie view taken by the learned Trial Judge and therefore, this appeal may be dismissed.

5. Rival contentions now fall for my determination.

6. At the outset, from the perusal of the plaint, it is seen that there is no proper description of the suit premises. The plaint refers to Exhibit-A which is a rough sketch. From the perusal of the sketch, again, it is quite clear that the description of the suit premises is quite vague. Mr. Siddiqui, learned Counsel for the appellant points out that there is a reference to police chowky and the suit premises are adjacent to the police station chowky. All these are matters to be established in the course of the trial. However, there is no reason to interfere with the impugned order which has only taken a prima facie view.

7. Apart from the vagueness in the description of the suit premises, learned Trial Judge was justified in taking cognizance of circumstance that it is the respondent No.1 who has initiated prior proceedings in the matter of protection of his alleged possession.

8. There does not appear to be any jurisdictional error or any serious perversity in the view taken by the learned Trial Judge. Accordingly, applying the principle laid down by the Hon'ble Supreme

Court in the case of *Wander Ltd & Anr Vs. Antox India P. Ltd. 1990 (Supp) SCC 727* there is really no case is made out so as to warrant interference.

9. However, it is made clear that the learned trial Judge while disposing of the suit on merits, will not permit itself by any observations made in the order. So also learned trial Judge will not permit itself to be influenced by the fact that this Court has not interfered with the impugned order. All contentions of all the parties are therefore expressly left open to be decided by the learned trial Judge at the initial stage depending upon the evidence produced by the parties.

10. With the aforesaid observations, this appeal is disposed of. There shall be no order as to costs.

11. Civil Applications do not survive and the same are also disposed of.

**(M.S. SONAK, J.)**