

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1888 OF 2017
IN
FIRST APPEAL NO. 749 OF 2017

Dwarkabai Trust & Anr.	... Applicants
Vs.	
Hanuman Ramanand Cooperative Housing Society Ltd.	... Respondent

Mr. Pradeep J. Thorat, Advocate for the applicants.
Mr. Mohan Kanade, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 7th February, 2018.

P.C.:

This Application is moved by the applicants for stay of the judgment and decree dated 6th May, 2017 passed by the learned Judge of the City Civil Court at Dindoshi, Goregaon, Mumbai in S.C. Suit No. 4161 of 1997. The respondent/plaintiff-Society has filed the suit for declaration and injunction in respect of open land owned by the respondent/plaintiff-Society which is around the suit premises, i.e., a flour mill admeasuring 34 sq. yards.

2. The learned counsel for the applicants has submitted that the suit structure is not only the flour mill standing on the suit land but the open land towards the North and East, i.e., backside of the flour mill. He submitted that on the north side, a wall is constructed by the

appellant. He submitted that there was an alteration of the status quo as it existed on the date of decree and date of service of Appeal. He submitted that earlier the trial Court has passed interim order on 6th October, 2010 which can be continued at the most. He relied on the order of this Court (Justice G.S. Patel) of 1st August, 2017 wherein this Court has directed the respondent to restore the status quo ante by constructing the wall. The learned counsel has submitted that the plaintiff-Society has filed R.A.E. Suit No. 734 of 2009 before the Small Causes Court for peaceful possession of the suit premises and in the said suit, the suit premises is described not only the structure of the flour mill but the adjacent open land towards the North and East. He, therefore, submitted that the order passed by the learned Judge of the City Civil Court dated 6th May, 2017 for perpetual injunction restraining the applicants from interfering the possession of the plaintiff except their possession over C.T.S. No. 855 /1, i.e., 34 sq. yards (306 sq.ft.) be stayed.

3. The learned counsel for the respondent/decreed holder has opposed this Application and submitted that there was no order of status quo during the pendency of the suit and thereafter till the filing of the Appeal. He submitted that during the pendency of the suit, the order of injunction was in his favour. On the point of suit premises,

he relied on the Agreement of Lease dated 6th September, 1958 between one Moreshwar Vishnu Paranjpe and other heirs and Ramanand Cooperative Housing Society Ltd., i.e. appellant-Society from whom the present respondent/Society has received the suit plot. He submitted that the entire plot was leased to the Society except the structure of the flour mill which is described as 34 sq. yards in the said Lease Agreement. He submitted that under such circumstances, the judgment and order passed by the trial Court is not to be stayed.

4. The issue at this stage is only of what is the suit structure. The Lease Deed is the basis of deciding what is the area of the flour mill and of the respondent. It shows that 34 sq. yards is given to the flour mill. The discrepancy in R.A.E. Suit on which the learned counsel for the applicant has relied and though it is mentioned Krishna Mahal Building on North and Sant Janabai Path Road on East and the open land is shown towards West, in view of the prayer clause of the said suit and the City Civil Court Suit, I am of the view that the area of the suit premises, i.e., flour mill is 34 sq. yards of the land on CTS No. 855 Final Plot No. 35. The discrepancy in the R.A.E. Suit at this stage cannot be interpreted or twisted in favour of the appellant pertaining to the open plot on the North and East as part of suit

premises. The appellant/defendant is running a flour mill on the area of 34 sq. yards. The right of ingress and egress from the northern side and western side of the suit structure is protected and the access to the customers of the flour mill is not to be obstructed by the members of the respondent-Society in any manner. Considering the nature of the judgment and order passed in the suit, I am not inclined to stay the impugned judgment and order during the pendency of the Appeal. The stay is not granted. Application is rejected. The order of interim relief granted pending suit is against the respondent. It is not to be read that the respondent/defendant otherwise have right on the remaining portion of the open plot by virtue of this order.

5. The learned counsel for the appellant prays that this order be stayed for eight weeks.

6. Considering the location and description of the suit premises and the Lease Agreement, it is not a fit case to grant stay. Hence refused.

(MRIDULA BHATKAR, J.)