

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.908 OF 2014**

Joseph Dominic Dias & Anr. ...Appellants

Versus

Municipal Corporation of Greater  
Mumbai

...Respondent

.....

Mr. Pradeep J. Thorat for the Appellants.

Mr. A.Y. Sakhare, Senior Advocate with Mrs. M.R. Bhoir for the  
Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATED: 12<sup>th</sup> MARCH, 2018.**

**P.C.:-**

The Appellant, who is the plaintiff in Civil Suit No.1799 of 2011 (hereinafter referred to as 'Plaintiff') has challenged the order dated 20<sup>th</sup> August, 2014 whereby the learned Judge, City Civil Court at Dindoshi has dismissed the Notice of Motion No.2183 of 2011.

2. The Respondent-Corporation had issued notice dated 14<sup>th</sup> July, 2011 under Section 351 of the Mumbai Municipal Corporation Act, 1888 whereby the Respondent-Corporation (hereinafter referred to as Defendant) called upon the Plaintiffs to show cause as to why the first and second floor of the structure No.75, situated at Vakola village, near Raut Hospital, Vakola Santacruz (East) admeasuring

(960mx4.7) appx. should not be demolished. The Plaintiffs have challenged the said notice in L.C. Suit No.1799 of 2011. The Plaintiffs, also filed the Notice of Motion praying for interim relief. The Defendants contested the suit as well as the notice of motion. After considering the material on record, the learned Judge by the impugned order dated 20<sup>th</sup> August, 2014 dismissed the Notice of Motion. Hence, the present appeal.

3. Heard Mr. Pradeep Thorat, the learned counsel for the Plaintiffs and Mr. A.Y. Sakhare, the learned senior counsel for the Respondent. Perused the records.

4. The Plaintiff is admittedly the owner of the structure No. 75, Vakola village, near Raut Hospital, Vakola, Santacruz (East), Mumbai bearing City Survey No.2205. The Plaintiff had purchased the said structure in the year 2000 by registered agreement for sale dated 4.12.2000. The Sale deed prima facie indicates that the total built up area of the structure was about 1044 sq.ft. There is no prima facie material on record to show that area of the structure, as on the date of inspection, exceeded 1044 sq.ft. The Plaintiff has also relied upon the telephone bill dated 24.8.2002 of Mahanagar Telephone

Nigam Ltd., Mumbai, addressed to the Plaintiff at the address 75-B, 1<sup>st</sup> Floor, Vakola village Road, off St. Anthony Road, Mumbai-400055. This bill prima facie indicates that the first floor of the said structure was existing in the year 2002 and this fact prima facie negates the averments in paragraph 4(b) of the written statement, that the first floor of the said structure was of recent origin.

5. Mr. Sakhare, the learned senior counsel for the Respondent contends that the Plaintiff has not produced any license or any other evidence to show that said structure was existing as on 17.4.1962. He submits that in the absence of such prima facie material, the structure cannot be held to be legal.

6. As stated earlier the Plaintiff had purchased the structure in the year 2000 and there is no prima facie material to show that the Plaintiff had extended the said structure. Under such circumstances, the question whether the predecessor of the Plaintiffs had constructed the structure with permission or whether it is an illegal structure are the questions which are required to be decided on merits. Until such time status-quo needs to be preserved. Even otherwise it is stated that the matter is now fixed for evidence. Considering these peculiar facts

and circumstances, it would be in the interest of justice that the subject matter of the suit is preserved. The appeal is allowed. The impugned order is set aside. Both parties are directed to maintain status-quo in respect of the suit structure till disposal of the suit.

**(SMT. ANUJA PRABHUDESSAI, J.)**