

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 755 OF 2013

Dhondiram Adam Mulla ...Appellant

Versus

Vighnaharta Builders & Projects Pvt. Ltd.& Anr. ...Respondents

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Mr.R.D.Misra for the Appellant.

Mr.A.S.Khandeparkar with Mr.Mukund Madekar i/b. Madekar and Co. for Respondent No.1

Mrs. M.R. Bhoir for Respondent No.2/ Municipal Corporation.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 07, 2018**

P.C.:

1. Admit. By consent of the parties, the Appeal is heard finally and decided at the stage of admission.
2. The learned Counsel for the appellant produces compilation of documents which are exhibited by the trial Court. .

3. This First Appeal is directed against the judgment and order dated 4th October, 2012 passed by the learned Judge, City Civil Court, Gr. Bombay in L.C.Suit No. 6928 of 1999.

4. The appellant/ plaintiff has filed the Suit for declaration that the action of defendant dated 3rd November, 1999 is illegal, bad in law and against the natural justice. The plaintiff has also prayed for mandatory injunction directing defendant no.1/respondent no.1 i.e., builder to enter into an agreement with him for providing alternate permanent shop premises in lieu of the suit premises i.e. shop no. 5, Suleman Ghasswala Compound, Ambedkar Road, Lal Baug, Mumbai. The said building was standing on the land owned by the Municipal Corporation i.e. respondent no.2/ defendant no.2. The building was demolished in the year 1999. The plaintiff admittedly was provided one alternate premises in the newly constructed building. It is the case of the plaintiff that he was having a residential accommodation as well as one shop in the old structure, but only one tenement was provided by defendant no.1 i.e, builder, which is used for the purpose of residence and not for the shop, and hence, he has filed the Suit.

In the said Suit, the plaintiff has tendered the evidence. Defendant no.1 has examined one Mr.Santush Pandurang Mane and the Municipal Corporation has examined one Mr. Dattatray Gadhade. The learned Judge of the trial Court has considered the oral as well as documentary evidence of the parties and held that the plaintiff is not entitled to get another alternate premises in lieu of suit premises and dismissed the Suit with costs by judgment and order dated 4th October, 2012. Being aggrieved by the said judgment and order, the appellant/plaintiff has filed this Appeal.

5. The learned Counsel for the appellant has submitted that respondent no.1 be directed to enter into an agreement in respect of providing alternate permanent shop premises in lieu of his shop. He has further submitted that the trial Court ought to have considered his prayer for mandatory injunction for which he is entitled to.

6. At the time of hearing, the learned Counsel for respondent no.1 has pointed out that the admission given in the cross examination by the plaintiff that on his instruction his counsel has prepared a map of

the suit structure, which is at Exhibit 18. He has relied on the said cross examination, Exhibit 18 and also the affidavit filed by the plaintiff, which is at Exhibit 24.

7. Perused the impugned order and cross examination of the plaintiff. It is found that the plaintiff has relied on the plan of his residence and his shop. It shows one tenement structure, which is divided in two parts. It appears that the appellant/plaintiff was using half portion of one tenement for his shop and remaining half portion for his residence. The appellant has contended that he was having his residence across the road and the suit shop on the other side is falsified by his own admission. In the affidavit dated 29th April 1999, the plaintiff has stated that he had made an application to the B.M.C to allot him separate residence and shop separately in the proposed constructed building, but the Municipality has refused to accept his application for separate residence cum shop premises. The Municipal Corporation is ready to allot him residence cum shop premises in newly constructed building as he was having previously. In the said affidavit, he has further stated that "I am ready and agreeable to accept the residence-cum-shop premises allotment in the new

constructed Building”. Now, the appellant is in possession of room in newly constructed building. Nothing remains in this First Appeal. Hence, First Appeal is dismissed.

(MRIDULA BHATKAR, J.)