

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

**CIVIL APPLICATION NO.3961 OF 2018
IN
FIRST APPEAL NO.1140 OF 2018
WITH
FIRST APPEAL NO.1140 OF 2018**

Babban Dhotre and Ors.	...Appellants
Versus	
The Municipal Corporation of Greater Mumbai and Anr.	...Respondents

.....

Mr. Santosh Raje with Mr. Sudhir S. Pawar for the Appellants.
Ms Oorja Dhond for the Respondent No.1-MCGM
Mr. Hemant P. Ghadigaonkar for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 9th AUGUST, 2019.

P.C.:-

ORDER IN CIVIL APPLICATION NO.3961 OF 2018:-

The Applicants have challenged the impugned judgment and decree dated 28th March, 2018 passed by the learned Judge, City Civil Court, at Borivali, in L.C. Suit No.897 of 2007.

2. By the present application, the Applicants-Plaintiffs have sought to restrain the Defendants from demolishing the suit premises

situated in CTS No.486 (old) and presently 502/I at village-Oshiwara.

3. It is to be noted that the interim relief was operating in favour of the Plaintiffs till the dismissal of the suit and the Plaintiffs were further protected for a further period of six weeks to enable the Plaintiffs to file appeal. The learned counsel for the Appellants states that due to inadvertence the Plaintiffs did not apply for interim relief at the time of filing of the application. He states that the Plaintiffs have now received notice dated 31st July, 2019 issued under Section 488 of the MMC Act, and the same has necessitated the Applicants/Plaintiffs to seek interim relief.

4. The Plaintiffs had challenged the notice dated 16th January, 2007 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of the suit premises on the ground that the suit structure was existing prior to 1983. The learned Judge has dismissed the suit by holding that the Applicants/Plaintiffs had failed to prove existence of the suit structure prior to 2005 and further that the notice issued by the Respondent No.1 is illegal.

5. The learned counsel for the Applicant states that the Applicants-Plaintiffs had produced several documents including NA order, electricity bills, water bills, Voter's list to prove the existence of

the suit structure. He submits that said documents have been discarded without assigning any valid reasons.

6. Having gone through the impugned judgment, as well as the documents relied upon by the Plaintiffs, in my considered view, status-quo in respect of the suit structure is required to be maintained till the disposal of the appeal. Hence, interim relief is granted in terms of prayer clause (a).

7. The civil application stands disposed of.

ORDER IN FIRST APPEAL NO.1140 OF 2018 :-

8. Heard the learned counsel for the respective parties. Arguable points are raised. Hence, admit.

9. Ms Oorja Dhond, the learned counsel waives service for the Respondent No.1-MCGM. Mr. Hemant Ghadigaonkar, the learned counsel waives service for the Respondent No.2. Paper book to be filed within a period of one year. Printing is dispensed with. Call for the Record and proceedings.

(SMT. ANUJA PRABHUDESSAI, J.)