

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 623 OF 2022
WITH
INTERIM APPLICATION NO. 9806 OF 2022

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NITIN
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The General Manager, Brihanmumbai
Electric Supply and Transport Undertaking
and Anr.

..Appellants

V/s.

Bharat Mahan Developer and Builders
thr. Partner Balasaheb Kashinath Shinde
and Ors.

..Respondents

Mr. Harinder Toor a/w Ms. Srishti Shetty and Ms. Heena Shaikh
for the Appellant.

Mr. Pradip Kadam for Respondent No.2.

Mr. Jaydeep Deo for the Respondent No.3/SRA.

CORAM : C.V. BHADANG, J.

DATE : 3 AUGUST 2022

P.C.

. This appeal is taken up for final disposal by consent of parties.

2. The challenge in this appeal at the instance of original Defendant Nos. 1 and 2 is to the order dated 10.08.2021 passed by the learned City Civil Court at Mumbai in Notice of Motion No. 1334 of 2021 in Long Cause Suit No. 1141 of 2021. By the

impugned order, the Notice of Motion filed by the first Respondent plaintiff has been allowed in terms of prayer clauses (a), (b) and (c) while rejecting prayer clause (d).

3. I have heard the learned counsel for the parties.

4. The dispute is pertaining to the alleged encroachment made by the appellants over the property belonging to Respondent No.1. The learned City Civil Court by virtue of the impugned order has appointed the Registrar, as the Commissioner to visit the suit property and take measurement of the actual boundaries and open space around the building constructed by the Plaintiff on the suit property being CTS No. 9A, 10A/1 and 11 and submit report.

5. It is undisputed that the Commissioner had visited the site and a report is submitted. The prayer clauses (b) and (c) are essentially aim at preserving status quo on the site.

6. Today the learned counsel for the Appellant placing reliance on the decision of this Court in *Niranjananabai Chandrakant Vira v/s. Pramilabai Balkrishna Zade & Another*¹, has submitted that such a measurement ought to be conducted by Respondent No.2-City Survey Officer, Kurla-3, Mulund (W),

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Mumbai. Specific reliance is placed on paragraph 16 of the judgment.

7. The learned counsel for the Appellant submits that the impugned order be accordingly modified which would be in the interest of both the parties as issue of encroachment can only be decided on the basis of the report of the joint measurement.

8. The learned counsel for the Respondents submits that already a report is submitted by the Commissioner namely Assistant Registrar of the City Civil Court. However, considering the submission on behalf of the appellant, he submitted that appropriate order be passed.

9. In such circumstances, the appeal is disposed of by consent of parties, in the following terms.

i) The Respondent No.2 City Survey Officer, is appointed as the Commissioner under Order XXVI Rule 9 of the CPC.

ii) The Commissioner shall carryout the joint measurement of the plots of both the parties i.e. the Appellant and Respondent No.1 and if necessary of the entire layout, after taking into consideration, the title Deeds and the entries recorded in the property register

and the map maintained in the office of the city survey and any other relevant documents as may be produced by the parties and shall submit the report to the City Civil Court within a period of three months.

iii) The cost of such measurement shall be borne by the Appellant.

iv) On such report being furnished, the City Civil Court can take up the civil suit for disposal on its own merits.

v) The parties to maintain status quo in respect of the suit properties pending disposal of the suit.

vi) The appeal is disposed of in the aforesaid terms with no order as to costs.

vii) Pending interim application stands disposed of.

C.V. BHADANG, J.