

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 317 OF 2022
WITH
INTERIM APPLICATION NO. 2255 OF 2022
IN
APPEAL FROM ORDER NO. 317 OF 2022

Mr. Mahesh Laljibhai Poriya and Anr. ...Appellants
V/s.

The Executive Engineer, Building Prop.
(W.S.) R-Ward for the MCGM through
Municipal Commissioner & Anr. ...Respondents

Ms. P. G. Bhatia a/w. Mr. Roshan D'souza, for the Appellants.
Mr. R. Y. Sirsikar, for the Respondent No.1 / MCGM.
Mr. Amogh Singh a/w. Ms. Sneha Patil a/w. Ms. Nidhi Ashiwal
i/b. Maniar Srivastava Associates, for the Respondent No.2.

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CORAM : C.V. BHADANG, J.
DATE : 25 AUGUST 2022

P.C.

. The reply filed by the Respondent – Corporation is taken on record.

2. The challenge in this appeal, is to the order dated 4 September 2021 passed by the learned City Civil Court at Dindoshi, Mumbai in Notice of Motion No.417/2016 in L.C. Suit No.3059/2015. By the impugned order, the notice of

motion filed by the Appellants – Plaintiffs has been partly allowed and the Respondent No.2 is restrained from taking forcible possession or dispossessing the Plaintiffs from the suit shop / shed admeasuring 50 ft x 20 ft situated on the plot being CTS No.256 of Village Malad (North). The Appellants are aggrieved by the fact that the injunction has not been granted in respect of an area admeasuring 30 ft x 7 ft, out of the total open area admeasuring 30 ft x 20 ft on the rear side of the suit shop / shed, toilet and the open space.

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

4. The learned counsel for the Appellants submitted that the Respondent No.2 has encroached upon the area admeasuring 30 ft x 7 ft belonging to the Appellants. It is submitted that the suit property consists of a shed admeasuring 50 ft x 20 ft and abutting thereto is an open land admeasuring 30 ft x 20 ft on the rear side of the suit shop / shed. The dispute in the present appeal is restricted to the area admeasuring 30 ft x 7 ft from out of the open space on the rear side of the suit shop, in respect of which the injunction is refused / not granted.

5. It is submitted that the trial Court was in error in refusing to grant injunction in respect of the area which has been encroached.

6. The learned counsel for the second Respondent has disputed that there is any encroachment. It is submitted that it is part of the land of the second Respondent and second Respondent has not encroached on any area or portion belonging to the Appellants. He points out that there is a building constructed by the second Respondent on his own land and the construction is complete and the Corporation has granted an occupation certificate on 4 May 2022. A copy of the occupation certificate is tendered across the bar, which is taken on record and marked 'X' for identification.

7. The learned counsel appearing for the Respondent – Corporation does not dispute that the construction is complete and the occupation certificate is granted to the construction.

8. I have considered the submissions made.

9. In this case, there is no measurement carried out by the Appellants as yet showing that certain portion of the open land on the rear side of the suit shop/shed has been encroached by the Respondent No.2. It can be seen that said claim for encroachment, has to be based on the findings in a measurement properly carried out on the basis of the revenue record. A specific query was made to the learned counsel for the Appellants whether there is any such material, prima facie indicating that the

Respondent No.2 has encroached upon any portion of the open land on the rear side of suit shop / shed to which the answer is in the negative. It can be seen that the construction is already complete in respect of which an occupation certificate is granted. In so far as suit shop/shed is concerned, already injunction is granted by the learned City Civil Court.

10. I have gone through the impugned order and I do not find that it suffers from any infirmity, in so far as refusing to grant injunction in respect of alleged encroachment. The appeal is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.