

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1087 OF 2019
WITH
INTERIM APPLICATION NO.4035 OF 2019
IN
APPEAL FROM ORDER NO.1087 OF 2019

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Smt.Meentu Mangesh Jamsandekar & Anr. ...Appellants

Vs.

Shri.Bhanushekar Vasant Jamsandekar & Ors. ... Respondents

Mr.J.M. D'Silva a/w Mr.U.N. Gupta for the Appellants.

Ms.Apara Vyas a/w Mr.Shubham Awasthi and Mr.Shashank
Mishra for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 27 JULY 2022

P.C.

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

2. The Appellants are original Plaintiff, who have filed
Suit No.1646 of 2019 for declaration and injunction etc. in which
a Notice of Motion No.2320 of 2019 was moved, seeking
injunction, in which the following substantive prayers were
made :

*“(a) That pending the hearing and final disposal of the
Suit, this Hon’ble Court be pleased to issue order of*

injunction restraining the Defendants, their servants and agents from selling, alienating, transferring or creating any third party rights, title and interest and or parting with possession of the suit properties or any part thereof;

(b) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to issue order of injunction restraining the Defendants to carry out work of any nature on the suit property or any part thereof and also further restrain the said defendants from doing any unauthorized construction adjacent to the house of the plaintiffs on the first floor, Anandibai Niwas, Thakur Pakhadi, Eksar Road, Borivali (West).

(c) That pending the hearing and final disposal of the suit this Hon'ble Court may be please to allow the Plaintiffs to repair their house situated on the first floor of the structure standing on the suit properties no.1 as per the list annexed at Exhibit "Y" of the plaint ;

(d) That pending hearing and final disposal of the above suit court receiver or any fit and proper person be appointed under Order 40 Rule 1 of C.P.C. with all powers to take possession of the suit properties and appoint the plaintiffs as the agent of the Court Receiver without payment of any royalty or security;"

3. The suit was resisted on behalf of the Respondents.

4. The learned Trial Court by the impugned dated 23 October 2019 order has granted injunction restraining the Respondents from creating third party rights in the suit property. The rest of the prayers are rejected. Feeling aggrieved by the refusal to grant remaining prayers, the Appellants are before this Court.

5. I have heard the learned counsel for the parties. Perused record.

6. The learned counsel for the Appellants has submitted that the Respondents are carrying out unauthorized construction in the suit premises which is apparent from the photographs placed on record. The Trial Court has refused to grant the injunction on the ground that the photographs are not bearing any date and time. Referring to the photographs which are produced in this Appeal (which are also part of the record before the Trial Court) it is submitted that the photographs indeed bear date and time. The photographs are to be obtained somewhere in the month of June 2019. He therefore, sought limited relief of restraining the Respondents from carrying out any further construction in the suit premises which according to the learned counsel is unauthorized and without obtaining the permission from the BMC.

7. The learned counsel for the Appellant has tendered certain photographs across the bar which are obtained on 23 May 2022 showing the construction with corrugated roof sheets. The photographs are taken on record and marked 'X' for identification (Collectively).

8. The learned counsel for the Respondents on instructions states that except the work of water proofing which was essential, in view of the onset of the monsoon, no other work is carried out. It is specific statement on behalf of the Respondents that the Respondents have not carried out any construction of whatsoever nature in the suit premises. It is submitted that the work of water proofing does not require permission. More so, when the work is absolutely essential in nature to prevent leakage of water during the monsoon season.

9. I have considered the submissions made. As noticed earlier, except the relief of restraining the Respondents from creating a third party interest, the other prayers are rejected by the Trial Court. The contention on behalf of the Appellant in this Appeal is limited to grant of injunction restraining the Respondents from making any construction in the suit premises.

10. Now a specific statement is made on behalf of the Respondents, that they have neither carried out any construction nor they have any intention to do so. The statement so made is accepted.

11. In the face of the specific statement made the Appeal is partly allowed and the Respondents or any body on their behalf

are restrained from making any construction in the suit premises during the pendency of the suit.

In the circumstances there shall be no order as to costs.

C.V. BHADANG, J.