

VRJ

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

FIRST APPEAL NO.343 OF 2021

Ratanshi Ugamshi Satra	... Appellant
V/s.	
Municipal Corporation of Greater Mumbai Through K/West Ward Andheri, Mumbai	... Respondent

Ms. Isha Bafna i/by Jaykar & Partners for the appellant.

Mr. Santosh Parad for the respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 23, 2023

P.C.:

1. The plaintiff has filed present appeal challenging the impugned judgment and decree dated 31st October, 2020 thereby partly decreeing Suit No.3199 of 2013 permitting the respondent No.1/Corporation to take appropriate action against unauthorized structure after following due process of law.

2. The learned City Civil Court recorded a finding that the plaintiff has failed to prove that the structure which is the subject matter of the suit was in existence prior to datum line, i.e., 1st April, 1962. According to the submission of the learned advocate for the appellant, the structure which is the subject matter of suit has been in existence since 1968. If that be so, the finding recorded by the learned City Civil Court that the construction was not in existence prior to 1st April, 1962, cannot be faulted.

3. The construction which was the subject matter of the suit is as under:

“(i) Covering of compulsory open space area abutting existing shop by means of tin sheet roof with support of M.S. Channels at West side adm. 5.50m X 8.50m X 3.0m and at rear side adm. 13.50m X 3.0m X (2.40m + 2.70m)/2, (ii) erection of plywood sheet partition of 2.50m & 5.50m in length and (iii) Construction of bathroom by means of brick masonry wall and ladi coba slab roof adm. 2.20m X 3.0m X 2.10m on compulsory open space area at rear side of the existing shop situated at Shop No.52-54, M.I.G. Bldg. no.6 Mahavir Traders, J.P. Road, Andheri (W), Mumbai.”

4. The documents on record filed by the plaintiff does not show existence of structure prior to 1st April, 1962. The copies of documents referred by the learned Trial Court in paragraph 19 are from the year 1992 till the year 2000.

5. Since the notice issued by the Corporation was less than 15 days, the learned City Civil Court was of the opinion that the period of notice of 15 days as required by the judgment of this Court in **Sopan Maruti Thopte And Another Vs. Pune Municipal Corporation And Anr.**, reported in AIR 1996 Bom 304 has not been issued. The Municipal Corporation was permitted to take action against unauthorized structure by following due process of law. Therefore, in my opinion, the impugned judgment is in accordance with law. There is neither miscarriage of justice nor any illegality pointed out.

6. The first appeal is, therefore, dismissed. No Costs.

(AMIT BORKAR, J.)