

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.920 OF 2023
WITH
INTERIM APPLICATION NO.17177 OF 2023
IN
APPEAL FROM ORDER NO.920 OF 2023

Ketan Chimanlal Tank & Ors.Appellants/Applicants
V/S
The State of MaharashtraRespondent
...

Mr. Mahadeo A. Choudhari a/w Ms. Trisha Choudhari for the Appellants/
Applicants in AO and IA.
Ms. Tanaya Goswami, AGP for Respondent/State.
...

CORAM: SANDEEP V. MARNE, J.
DATE : NOVEMBER 8, 2023.

P.C.:

1 By the present Appeal the Appellants challenge order dated 12 October 2023 passed by the City Civil Court dismissing Notice of Motion No.387 of 2013. Plaintiffs have instituted S.C. Suit No.383 of 2013 against the State Government seeking a permanent injunction to restrain the State Government from dispossessing them from possession of the suit property and for various other reliefs.

2 It appears that the City Civil Court initially passed order dated 6 February 2013 directing the DILR, Mumbai, to measure land at CTS

No.109 and to demarcate its boundaries through the concerned City Survey Officer. In pursuance of the order so passed by the City Civil Court on 6 February 2013 the measurement was apparently conducted by the City Survey Officer and a map was prepared showing the boundaries of land bearing CTS No.109 and location of various constructions of Plaintiffs. The map so prepared on 16 March 2013 indicates that some of the constructions carried out by the Plaintiffs exceeded the boundaries of CTS No.109.

3 It appears that the Plaintiffs filed one more application before the City Civil Court for carrying out fresh measurement in the light of the application filed by the Plaintiffs before the Collector, Mumbai Sub-Urban District for area of correction of CTS No.109. The Plaintiffs requested the City Civil Court to conduct joint measurement of CTS No.109 for the purpose of pursuing their application for area correction. The City Civil Court accordingly passed order dated 29 April 2016 directing joint measurement of CTS No.109. After conducting the joint measurements, the City Survey Officer, Malad, submitted a report dated 15 April 2017 to the City Civil Court opining *interalia* that Plaintiffs are occupying excess area of 1167.1 square meters outside the boundaries of CTS No.109. However, the City Survey Officer also opined that the property card relating to CTS No.109 has recorded the area of land as 2479.4 square meters and there was a possibility of an arithmetical mistake in recording the area of CTS No.109 while conducting the City Survey.

4 It also appears that the Plaintiffs moved one more application before the City Civil Court for measuring adjoining lands bearing CTS Nos.110 and 99 alongwith CTS No.109. The City Civil Court passed order on 15 January 2019 directing the measurement of CTS Nos.109, 110 and 99. It appears that in pursuance of the order passed by the City Civil Court on 15 January 2019 the City Survey Officer has conducted measurement of the three Gat numbers bearing CTS Nos.109, 110 and 99 and the measurement map again depicts occupation by the Plaintiffs in adjoining three Survey Nos.110, 108 and 99 in excess of boundaries of CTS No.109.

5 Mr. Choudhari, the learned Counsel appearing for the Appellants would submit that there is a mistake in recording area of CTS No.109 while conducting the city survey. According to him CTS No.109 was earlier assigned Survey No.22/B/1 which had total area of 32 gunthas. That however while conducting the City Survey and while assigning CTS No.109 to the land of lesser area came to be recorded in respect of CTS No.109. According to him on account of this mistake, instead of recording the entire area of 32.63 gunthas of Survey No.22/B/1, CTS No.109 records lesser area of 2479.4 square meters. He would further submit that an application has already been made to the Collector for area correction of CTS No.109.

6 *Prima facie* there appears to be some truth in the contentions raised by Mr. Choudhari. This is also certified by the City Survey Officer,

Malad, in his letter dated 15 April 2017 where the Officer has expressed possibility of an arithmetical error in recording the area of CTS No.109 while conducting the City Survey.

7 In my view all these aspects are not taken into consideration by the City Civil Court while rejecting Notice of Motion No.387 of 2013. In order to enable the Plaintiffs to invite the attention of the City Civil Court to various aspects as discussed above, it is necessary to set aside the order dated 12 October 2023 so that Notice of Motion No.387 of 2013 can be heard and decided afresh.

8 In that view of the matter, the Appeal is partly allowed by setting aside order dated 12 October 2023 passed by the City Civil Court. Notice of Motion No.387 of 2013 is restored. The same shall be considered and decided afresh on its own merits without being influenced by any of the observations made in the order dated 12 October 2023 or in the present order.

9 In view of the disposal of the Appeal from Order, the Interim Application also stand disposed of accordingly.

(SANDEEP V. MARNE, J.)