

Aswale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.2271 OF 2019

IN

SUIT NO.71 OF 2013

WITH

SUIT NO.71 OF 2013

ANJALI
TUSHAR
ASWALE

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ANJALI TUSHAR
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Date: 2023.03.17
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Rajender Singh Sethi & Anr ..Orig.Plaintiff/Applicants
IN THE MATTER BETWEEN
Mr. Rajender Singh Sethi & Anr ..Plaintiffs
Vs.
Inshah Auto Works ..Defendant

.....

**Mr.Omprakash Pandey a/w Suchita Pandey, Pramila
Prajapati, for the Applicants/Orig.Plaintiffs.**

Ms. Minal Chavan i/b Vinay P. Hegde, for the Defendant.

CORAM:- B. P. COLABAWALLA,J.

DATE :- MARCH 16, 2023.

P. C.:

The above Suit is filed seeking a declaration that the Defendant is a rank trespasser in respect of the Suit premises more particularly described in Exhibit-A to the Plaint as well as the Plan annexed at Exhibit-B to the Plaint.

2 In the present Suit, there is a serious dispute as to whether the Suit property forms part of the property belonging to the

Plaintiffs or whether it forms the part of the property belonging to the Defendant. To put it in a nut shell, the Plaintiffs' property is Survey No.41, 42 (2) (part) and Old CTS No.37A (part), including CTS No.37C Village Mulgaon, Tal Andheri, Mahakali Caves Road, Mumbai 400 0093. The property of the Defendant is Survey No.42 Hissa No.11, CTS No. 37 of Village Mulgaon, Mahakali Caves Road, Tal. Andheri, Mumbai-400 093. To ascertain as to whether the Suit property falls within the property of the Plaintiffs or that of the Defendant, the above Interim Application is filed seeking the following reliefs:-

“a) Pending the hearing and final disposal of the suit, this Hon’ble Court be pleased to appoint District Inspector of Land Records (D. I. L. R.) and/or City Survey Officer with the direction to survey and demarcate the boundary of the suit premises thereby clarifying where the suit property is situated; whether it is on the plaintiff's property i.e. suit premises viz. structure admeasuring 30’ x 70’ along with 2 structures admeasuring 12’x10’ and 16’x10’ situated on the land bearing Survey No.41, 42 (2 part) CTS No.37C village Mulgaon, Taluka Andheri, Mahakali Caves Road, Andheri (East), Mumbai- 400 093 or whether the suit premises is situated on survey No.42, Hissa No.11, C. T. S. No.37, Village Mulgaon, Mahakali Caves Road, Tal. Andheri, Mumbai- 400 093 and submit his report along with plan to this Hon’ble Court.”

3 In the above Interim Application, it is stated that there is a serious dispute about Survey Number and CTS Number of the Suit premises and demarcation of the Suit property. It is for this reason, and to cut-short the disputes between the parties, the relief

reproduced above is sought by the Plaintiff. It has also been pointed out that the Defendant has also filed an application before the City Survey Office for demarcation.

4 The learned counsel appearing on behalf of the Defendant has fairly stated that by allowing the prayer in the above Interim Application would cut-short the disputes between the parties. She therefore, on instructions, stated that demarcation can be done by the District Inspector of Land Records and/or by the City Survey Officer to survey and demarcate the boundary of the Suit premises.

5 Considering the fair stand taken by both parties, the above Interim Application is allowed in terms of prayer clause (a) reproduced above. The concerned Authority shall submit its report along with a Plan to this Hon'ble Court within a period of 12 weeks from today. If any assistance is required by the concerned Authority for carrying out the survey and demarcation, the Plaintiffs as well as the Defendant shall render all necessary assistance.

6 The Plaintiffs are permitted to serve a copy of this order on the DILR within a period of one week from today. The costs of carrying out the aforesaid survey and demarcation shall be paid by the Plaintiffs at the first instance and shall be subject to further orders of the Court.

7 The Interim Application is accordingly disposed of. No order as to costs.

8 This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B.P.COLABAWALLA J.)