

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

Writ Petition NO. 8086 of 2019

M/S. Kukreja Construction Company And Ors

...Petitioner

Versus

Vishnu Nathusing Kumavat

...Respondent

Adv. Pranil Sonwane, Adv. Varsha Gangawane i/b. Adv. Sharayu
Shinde for the Petitioner.

Adv. Nilesh Parte for the Respondent No.1.

CORAM : RAJESH S. PATIL, J.

DATED : 19 MARCH 2024

P.C.:

1. The Civil Revision Application is filed by the original plaintiff challenging proceedings in a T.E. Suit. .

2. The Petitioner original plaintiff had filed T.E. Suit for possession of open plot of land admeasuring 400 sq. yards, forming part of the larger plot admeasuring 5277 sq. yards, situated at Chembur Mumbai-400 071. In the said eviction suit filed under Section 41 of the Presidency Small Cause Courts Act, 1881, an application was preferred by the original plaintiff (exhibit-9) seeking an injunction against the defendant from

creating any third party rights or encroaching upon the suit plot, i.e., open plot admeasuring 400 sq. yards forming part of the larger plot of land admeasuring 5277 sq. yards. during the pendency of the suit.

3. The said application exhibit-9 was decided by the Trial Court by its order dated 16 January 2019 thereby granting temporary injunction restraining the defendant from using the area other than 400 sq. yards till the final disposal of the suit.

4. The defendant in the T.E. Suit filed an appeal being dissatisfied with the order passed by the Trial Court. The appeal was heard by the Division Bench of the Small Causes Court and by their judgment and order dated 29 March 2019 the Division Bench quashed and set aside, the order passed by the Trial Court and partly allowed application (exhibit-9), thereby restraining the defendant from creating any third party interest in respect of the suit premises admeasuring 400 sq. yards and the portion abutting the suit plot, till the disposal of the suit. The said order passed by the Appellate Bench of the Court of Small Causes is challenged by way of Writ Petition before this Court.

5. I have heard both the sides and have considered the

documents which are produced on record.

6. It is matter of record that the suit filed before the Trial Court under Section 41 of the Presidency Small Cause Courts Act, 1881 is pertaining to possession being sought of an area admeasuring 400 sq. yards. forming part of the larger portion of land admeasuring 5277 sq. yards.

7. According to me, once the possession is sought of 400 sq. ft., The Court of Small Cause trying a suit under Section 41 of the Presidency of the Small Cause Courts Act, 1881 would not have jurisdiction to pass any order apart from the area of which the possession is sought. Therefore, in my opinion, the Appellate Court has rightly granted injunction as far as the suit plot is concerned, i.e., 400 sq. yards and land abutting the said plot.

8. I am of the view that there is no need to interfere with the reasoned order passed by the Appellate Bench of Small Causes Court. The Writ Petition is not entertainable and hence is dismissed with not cost.

(RAJESH S. PATIL, J.)