

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 524 OF 2024
WITH
INTERIM APPLICATION NO. 10382 OF 2024

Usman Abdul Sattar Malkani	...Appellant
Versus	
The Maharashtra Housing Area Development Authority (MHADA) And Others	...Respondents

Mr. Ramdas Hake Patil for the Appellant.
Mr. A.R. Patil, Addl. G.P. for Respondent No.2/State.
Ms. Vidya Vyavahare and Pallavi Khale for Respondent No.3.

CORAM : M.M. SATHAYE, J.
DATE : 3rd DECEMBER 2024

P.C. :

1. Heard learned counsel for the Appellant and learned Additional G.P. for Respondent No.2/State and learned counsel for Respondent No.3/Corporation.

2. By the impugned order dated 01.04.2024 passed by the Bombay City Civil Court at Dindoshi in Notice of Motion No. 92 of 2021 in S.C. Suit No. 2857 of 2019, the Appellant's motion taken out for restraining the Respondents from entering into and/or constructing unauthorised shed on the land of the Appellant i.e. open piece of land bearing plot No. 1, Survey No.5, Hissa No. 2(part) CTS No. 135, Wadhwan, Ashok Nagar, Kandivali (East), Mumbai – 400101.

3. Perusal of the record shows that the Appellant claims to be owner of the suit land and the prayers of declaration about the action of Respondents as well as permanent injunction in respect of suit land is sought on the assertion of title.

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4. Perusal of the impugned order shows that the Appellant has not produced the document of declaration that he claims to be the basis of his title as well as other material in support of his case.

5. Learned counsel for the Appellant submitted that at the time when the motion was heard, the Appellant could not produce the documents; however, now the Appellant has documents in support of his case and therefore, seeks leave to file a fresh motion.

6. In view of the aforesaid facts and circumstances, no purpose will be served in entering the merits of the Appellant's case on the basis of documents which were not before the Trial Court.

7. Hence, the Appeal from Order and the Interim Application are disposed of by passing following order.

- (i) The impugned order is not interfered with.
- (ii) The Appellant is at liberty to file a fresh Notice of Motion and support the same with the documents which he claims to have received.
- (iii) If such motion is filed, the same will be disposed of on its own merits and in accordance with law without being influenced by the observations made in the impugned order or this order.
- (iv) Rival contentions of all the parties are kept open.

8. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)