

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 906 OF 2024
WITH
INTERIM APPLICATION NO. 15830 OF 2024

Mr. Rashid Ebrahim ShaikhAppellant

V/S

The State Of Maharashtra Through
The Deputy Collector (ENC), Malad, MumbaiRespondent

Mr. Pradeep Thorath i/b. Mr. Hemant Ghadigaonkar a/w. Mr. Pramod
Gautam, for Appellant.

Mr. A. R. Patil, Addl G.P for the Respondent - State.

CORAM : M.M. SATHAYE, J.

DATE : 18th DECEMBER, 2024

P.C. :

1. Heard learned counsel for the Appellant/Plaintiff and learned Addl. G.P. for Respondent/State.
2. The appeal is filed challenging the Order dated 06.12.2024 passed in Draft Notice of Motion in S.C. Suit No. 2616 of 2024 by City Civil Court, Borivali Division, Dindoshi, Mumbai. The impugned Order refuses ad-interim relief. Admittedly, the motion is still pending.
3. Learned counsel for the Appellant invited this Court's attention to description of the suit property in the plaint which indicates that the suit is in respect of a structure on CTS No. 2409 of village Malvani, Taluka Borivali, situated at Ali Talao, behind Gorai Mandir, Kharodi, Malvani Malad (W), Mumbai. It is the case of the Appellant,

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as can be seen from paragraph 4 of the plaint, that suit notice dated 07.11.2024 is issued to one Mr. Rafiq Chauhan and it is in respect of encroachment on CTS No. 2670. Therefore, apparently, the suit notice is not in respect of suit structure/property situated on CTS No. 2409. It appears that the suit was filed because according to the Appellant, the suit notice was pasted on the wall of the Appellant's gala on CTS No. 2409.

4. The learned Addl. G.P. disputes the case about location of pasting. Be that as it may.

5. Without entering into the merits of the matter, the Appeal from Order is disposed of by clarifying as under.

(A) No action pursuant to the impugned notice dated 07.11.2024 can affect the structure of the Appellant situated on CTS No. 2409.

(B) Similarly any order passed in Draft Notice of Motion in S.C. Suit No. 2616 of 2024, including the impugned order or the order that may be passed in the motion, will not affect the action of the Respondent/State taken pursuant to the notice dated 07.11.2024 in respect of structure / encroachment on CTS No. 2670.

6. Appeal from Order and interim application **are disposed of in above terms.**

(M.M. SATHAYE, J.)