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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 565 OF 2024
WITH
INTERIM APPLICATION NO. 11246 OF 2024
IN
APPEAL FROM ORDER NO. 565 OF 2024**

M/s. Dube Construction Company
Thr. Its Partner Girish G. Dube

.....Appellant

Vs.

Municipal Corporation of Greater Mumbai
Thr. Its R-Central Ward and anr

.....Respondents

Mr. Abhishek Mishra for the appellant
Mr. R. Y. Sirsikar for respondent no. 1-BMC
Mr. Yogesh Yagnik for respondent no. 2

CORAM : GAURI GODSE, J.

DATE : 12th MARCH 2025

ORDER:

1. Heard learned counsels for the parties. This appeal is preferred by the plaintiff to challenge the rejection of the notice of motion for injunction. The suit is filed claiming rights in respect of CTS Nos. 30, 31/A to D, 31/B-01 to 11, E1/E-to H, 32, 31/1 to 9 corresponding to final plot no. 22A of TPS II of Borivali, Village Kanheri, Taluka: Borivali,

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Mumbai Suburban District. The plaintiff prays for a temporary injunction restraining the corporation from pursuing any application or permission for sanction in favour of defendant no. 2 in respect of the suit property CTS No. 30 corresponding to final plot no. 22A. The notice of motion is dismissed by referring to the Court Commissioner's report placed on record at Exhibit 10. The notice of motion further prays for a restraining order against defendant no. 2 from encroaching upon or carrying out any construction in respect of the suit property.

2. Learned counsel for the appellant submits that the suit property is purchased by the plaintiff pursuant to a sale certificate issued by this Court in Suit No. 42 of 1972 on 24th September 1991. The order issuing sale certificate relied upon by the plaintiff is annexed to the plaint. The sale certificate refers to final plot no. 22A. Learned counsel for the appellant further submits that the photographs annexed by the plaintiff in the suit clearly indicates that defendant no. 2 attempted to encroach upon the suit property which belongs to the plaintiff which forms part of final plot no. 22A. He submits that though the title document in favour of the plaintiff in respect of final plot no. 22A is placed on record, by the impugned order, interim relief is rejected by erroneously relying upon the Court Commissioner's report at Exhibit

10. He, therefore, submits that the impugned order would require interference by this Court.

3. Learned counsel for defendant no. 2 supports the impugned order. He submits that defendant no. 2 is concerned with CTS No. 29 corresponding to final plot no. 12. He submits that property cards in the name of defendant no. 2 are placed on record. He submits that part of the CTS number belonging to defendant no. 2 and major part of the area belonging to the plaintiff in respect of the suit properties is acquired by the State Government. He, therefore, submits that the claim raised by the plaintiff pertains to disputed facts. However, he submits that by relying upon the Court Commissioner's report, the learned Judge of the City Civil Court has recorded a prima facie finding that the plaintiff failed to indicate any document supporting the allegations against defendant no. 2. He, therefore, submits that the impugned order would not require any interference by this Court.

4. I have perused papers of the appeal. The title document relied upon by the plaintiff refers to final plot no. 22A. The property cards in respect of CTS numbers in the name of plaintiff do not indicate any reference to CTS No. 29 in respect of which defendant no. 2's name is

entered. A perusal of the impugned order indicates that the learned Judge has relied upon the Court Commissioner's report at Exhibit 10. The report prepared by the City Survey Officer refers to measurement of CTS No. 29 and 30 fixing the boundaries of the respective properties. According to the report, extracts of CTS Nos. 29 and 30 are recorded as per the boundaries and the correct area. The learned Judge of the City Civil Court has relied upon the map and the report prepared by the City Survey Officer. Relying upon the city survey map and the property cards, the learned Judge of the City Civil Court has recorded prima facie finding that there was no document to indicate that defendant no. 2 has attempted to seek any permission for construction on the suit property. Thus, in the absence of any prima facie document to indicate that defendant no. 2 was making any construction on the suit property, the learned Judge has refused to grant any injunction.

5. The claim raised by the plaintiff would require trial as it involves the disputed questions of facts on the areas owned and in possession of the respective parties. Thus, in the absence of any prima facie documents to support the allegations in the suit, no fault can be found in the reasons recorded in the impugned order. The impugned order

records reasons which considers all the basic principles for deciding the prayer under Order XXXIX Rule 1 of Code of Civil Procedure, 1908. I do not see any illegality or perversity in the reasons recorded in the impugned order.

6. The grounds raised on behalf of the appellant do not support the prayers for injunction. The appeal is devoid of any merit.

7. Hence, the appeal is dismissed.

8. In view of dismissal of appeal, Interim Application No. 11246 of 2024 is disposed of as infructuous.

9. Needless to clarify that the observations in the impugned order or the observations in this order are prima facie observations. The suit should therefore be decided on its own merits, uninfluenced by the observations in the impugned order or this order.

[GAURI GODSE, J.]