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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
INTERIM APPLICATION NO. 9163 OF 2025  
IN  
FIRST APPEAL NO. 1189 OF 2025

Gilbert Clifford Pereira ...Applicant/Appellant

Versus

Cecil Francis Pereira And Anr. ...Respondents

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Mr. Rajesh Revankar a/w. Mr. Melvyn Fernandes, Ms. Aalisha Sharma,  
Ms. Drishti Bhatia i/b. Vaish Associates for the Applicant/Appellant.  
Mr. J. M. D'silva a/w. Ms. Jacquilie D'silva for the Respondent no.1.

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**CORAM : M.M. SATHAYE, J.**

**DATE : 8<sup>th</sup> DECEMBER, 2025**

**P.C. :**

1. Heard learned counsel for the Applicant/Appellant-Org. Plaintiff and learned counsel for contesting Respondent/Defendant no.1.

2. This is an application seeking continuation of the interim Order dated 11.11.2019 which was granted during pendency of the Trial.

3. The Appellant-Org. Plaintiff had filed a suit for declaration and injunction in respect of 100 sq. ft. open open space in plot no.497 situated at 69, Bhavani Shankar Road, Dadar, Mumbai – 400 028. The Appellant's claim is based on probated Will of the father of the parties – late Mr. Dominic Braz Pereira.

4. Learned counsel for the Appellant invited Court's attention to clause 7 of the concerned Will to contended that the father of the parties has bequeathed upon the Appellant, flat no.2 on the ground

floor and all open space on the ground floor of the suit property. He submits that the injunction which was operating during the Trial i.e. prayer clause (a) of Notice of Motion No.617 of 2019, must be continued during the pendency of the appeal

5. Perusal of concerned prayer clause (a) indicates that during pendency of the suit, Respondent/Defendant No.1 was restrained from asserting to be owner of the suit property and all open space surrounding the said building and open space admeasuring 100 sq. ft. Injunction was further granted against Defendant No.1 from disturbing or tress-passing or interfering with the Appellant's ownership and possession of enjoyment of the suit property. Further injunction was granted restraining Respondent/Defendant No.1 from any manner dealing with or transacting or contracting in relation with the suit property being open space admeasuring 100 sq. ft.

6. Learned counsel for Respondents on the other hand opposed continuation of the blanket injunction granted during pendency of the Trial, on the ground that on appreciation of the evidence, the Trial Court found that the suit property namely 100 sq. ft. area around the building is not ascertainable and suit has been dismissed. He submits that when the suit property is not identifiable/ascertainable, injunction order must not be passed.

7. Learned counsel for the Appellant has however pointed out that though the suit property was restricted to 100 sq. ft. area, under Issue no.1 Trial Court has granted declaration about ownership in respect of the entire open space around the suit building.

8. Learned counsel for Respondent No.1 on instructions from Respondent No.1 Mr. Cecil (who is present in the Court), submits that there are certain garages in the open space, which according to him, are illegal. This position is disputed by the learned counsel for the Applicant. He further states on instructions, that Respondent No.1 does not have any vehicle and therefore, there is no question of parking in any of the garages.

9. I have considered the rival submissions and perused the record.

10. Suit is dismissed. Parties are closely related, being brothers. At the interim stage, it is seen from record that the prayer made in the suit and description of the suit property is restricted to 100 sq. ft. open space around the building, though the Will *prima facie* describes the entire open space around flat no.2. Plaint paragraph no.3 specifically restricts the suit property to be only 100 sq. ft open space area.

11. In such circumstances, when the Trial Court has found on appreciation of the evidence that 100 sq. ft. area is not ascertainable/identifiable, in my considered view, this is not a fit case to continue blanket interim injunction as it existed during the Trial.

12. In view of the aforesaid facts and circumstances, **the interim application is disposed of** by passing following order, which shall operate during pendency of the appeal :

- (a) The impugned Judgment and Decree dated 09.05.2025 passed in S.C.Suit No. 260 of 2019 by City Civil Court,

Mumbai, will operate only in respect of 100 sq. ft open space around the building, as described by the Appellant in the plaint.

- (b) The statement of Respondent No.1 that he does not have any vehicle/car and as such there is no question of its parking in the garages in the open space, is recorded.

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

**(M.M. SATHAYE, J.)**