

MHCC040000942013



Presented on	:	03-01-2013
Registered on	:	04-01-2013
Decided on	:	28-04-2026
Duration	:	13Y-3M-25D

Exh.28

**BOMBAY CITY CIVIL COURT, BORIVALI DIVISION AT
DINDOSHI, GOREGAON, MUMBAI**

**SHORT CAUSE SUIT NO.20 OF 2013
(CNR No.:MHCC040000942013)**

Sampat Jagrup Yadav]
 Age : 70 years, Occupation : Business,]
 Adult, Mumbai Inhabitant, residing at Bhabrekar]
 Nagar, Charkop Village, M. G. Road, Kandivali]
 (West), Mumbai – 400 067.] **... Plaintiff**

V/s.

1) State of Maharashtra]
 having office at Mantralya, Mumbai – 400 032.]
]
2) The Deputy Collector (ENC) & Competent Authority]
 having office at Rustomjee Complex, Jaswant]
 Sawant Road, Dahisar (West), Mumbai – 400 068.] **... Defendants**

Appearance :-

Ld. Advocate Dhananjay Halwai for plaintiff.

Ld. AGP Shanti Kadam for defendant No.1 & 2/State.

**CORAM : H.H.JUDGE T. T. AGLAWE
(C.R.NO.06)**

Date : 28th APRIL, 2026.

:: JUDGMENT ::

This is a suit for permanent injunction.

2. The case of plaintiff is that, one stable admeasuring 50 x 20 ft constructed of A.C. sheets roof on wooden poles, one residential room admeasuring 14 x 25 ft. constructed of bricks masonry walls and A.C. sheet roof, another residential room admeasuring 10 x 25 ft. constructed of bricks masonry wall and A.C. sheet roof and one godown admeasuring 24 x 20 ft. constructed of A.C. sheet roof of wooden poles situated at Bhabrekar Nagar, Charkop Village, M. G. Road, Mumbai are the 'suit premises'.

3. Further case of plaintiff is that, plaintiff is in possession of suit premises since long. The Government has issued cattle license in favour of plaintiff in the year 1988. Said license has been continued from time to time. Plaintiff is residing alongwith his family at the suit premises and also maintaining the cattle in the stable. Government has issued a card in the name of plaintiff during the census of 2000. Suit premises are old, protected and tolerated structures. The Defendants are not entitled to demolish suit premises without following due process of law. On 28.12.2012 and 02.01.2013 the Officers of defendants visited suit premises and directed him to vacate the suit premises and to remove the cattles so that they can demolish the suit premises. Therefore, plaintiff has instituted present suit for permanent injunction against proposed demolition without following due process of law.

4. Defendants have filed Written Statement below Exh.5 and thereby strongly resisted the claim.

5. Contention of defendants is that, the suit is not maintainable as framed. There is no cause of action. The Officers of defendants have not visited and have not threatened for demolition as

alleged by the plaintiff. Suit is filed on false and illusory cause of action. Plaintiff has not claimed for declaration. Plaintiff has not given proper description of property and the documents submitted by plaintiffs are not relevant. Therefore, the suit is liable to be dismissed.

6. My learned Predecessor has framed issues below Exh.6. Those are reproduced here under alongwith my findings and reasons.

Sr.No.	ISSUES	FINDINGS
1.	Does the plaintiff prove that suit premises is in his possession since long time?	No.
2.	Does the plaintiff prove that defendants are going to demolish without following due process of law?	No.
3.	Is suit bad for want of notice under Section 80(2) of C.P.C.?	No.
4.	Is suit tenable in the present form?	No.
5.	What an Order and Decree?	Suit is dismissed with Costs.

REASONS

7. To establish his claim, plaintiff has examined his son and Power of Attorney Chandrashekhar Sampat Yadav below Exh.7. Chandrashekhar (PW-1) has filed his evidence affidavit Exh.7 on the lines of plaint averments. Besides oral evidence of Chandrashekhar, plaintiff is relying on following documents;

- i) General Power of Attorney dated 21.12.2018. Exh.9
- ii) Cattle License Exh.10
- iii) Cattle License in the name of Shamrathi Sampat Yadav. Exh.11

iv)	Ration Card.	Exh.12
v)	Electricity Bill.	Exh.13
vi)	Photopass.	Exh.14
vii)	Ration Card of Chandrashekhar Yadav.	Exh.15
viii)	Electricity bill in the name of plaintiff.	Exh.16

8. Learned AGP has cross-examined plaintiff's witness.

9. Plaintiff has not examined any other witness.

10. Similarly defendants have not adduced any evidence in the rebuttal.

11. Heard learned Advocate for plaintiff and learned AGP for the State.

12. Learned Advocate for plaintiff has argued that, plaintiff had adduced his evidence. Whereas defendants have not adduced in the evidence in rebuttal. Therefore, adverse inference need to be drawn against the defendants. Plaintiff has produced documents on record to show his possession over the suit premises since long. Plaintiff is in possession and the defendants cannot dispossess plaintiff or cannot demolish suit premises without following due process of law. The Court has to decide the case on the basis of pleading. Since the Chamber Summons of plaintiff have been rejected, the Court cannot consider subsequent events as sought to be raised by AGP

13. Learned Advocate for plaintiff submits that, plaintiff is in long standing possession of suit premises. Therefore, the defendants

cannot evict him without following due process of law. For this he has relied on **Smt. Sarladevi widow of Kundanlal Bandawar, Dharampeth, Nagpur V/s. Shailesh s/o. Gourishankar Namdeo, Tilaknagar, Nagpur, AIR 1996 BOMBAY 98.**

14. On the other hand, learned AGP has argued that, plaintiff has not described the suit property. Plaintiff pleaded that, suit premises is structure of brick masonry wall and A.C. sheet roof. Whereas in his cross-examination Chandrashekhar (PW-1) has admitted that, the structure is of Tadpatri and Bamboo only. Plaintiff has not prayed for substantive relief of declaration. Plaintiff had not produced renewed licenses as claimed. There is no reliable document to show possession of plaintiff over suit premises. Plaintiff's witness does not have any personal knowledge. The suit structures are already demolished in the year 2022. Therefore, cause of action does not survive. Moreover, plaintiff has not challenged the Order of rejection of Chamber Summons. Therefore, plaintiff is not entitled for any relief as claimed.

15. In view of oral and documentary evidence and arguments of both parties, I now answer forgoing issues as under.

AS TO ISSUE NO.1 AND 2 :-

16. It is the case of plaintiff that, there are four structures. Two residential rooms, one godown and one stable situated at Bhabrekar Nagar, Charkop Village. However, plaintiff has not described the suit premises properly in the sense that, plaintiff has neither given the four boundaries of suit premises nor stated the plot number/CTS number etc. Thus, there is no compliance of Order VII, Rule 3 of Code of Civil

Procedure, 1908 (in short 'CPC').

17. Plaintiff claims that, suit premises are protected and tolerated structures. The area of suit structures as pleaded is 50 x 20 ft, 14 x 25 ft., 10 x 25 ft. and 24 x 20 ft. Plaintiff has produced Photopass below Exh.14. It is issued on 04.09.2000 for hutment admeasuring 225 Sq. Ft. only. On the basis of this Photopass Exh.14 it cannot be stated that, plaintiff was in possession of four structures of suit premises as on 04.09.2000.

18. Plaintiff has also filed Cattle licenses below Exh.10 and 11. Exh.10 is in the name of plaintiff and Exh.11 is in the name of wife of plaintiff. Exh.10 is issued on 14.01.1988 and Exh.11 is issued on 26.09.1994. Exh.10 and Exh.11 both are renewed lastly in the year 2006-2007. The suit is instituted in the year 2013. Plaintiff claims that, Cattle licenses are renewed from time to time. However, plaintiff has not produced the renewed Cattle licenses as on the date of suit. Moreover, the Cattle Licenses does not describe the suit premises as alleged by plaintiff.

19. Plaintiff is also relying on the Electricity bills below Exh.13 and 16. Those are in respect of Room No.8 and 9 Saicharan Society, Kandivali. Again there is no evidence to show that, said Room No.8 and 9 of Saicharan Society are the suit premises. Ration Card (Exh.12) in the name of plaintiff shows the address "Besides Marathi School, Near Charkop Village Lake". Whereas Ration Card (Exh.15) in the name of Chandrashekhar (PW-1) shows the address "Room No.9, Saicharan Chawl, Jalaram Mandir, Charkop". It appears that, plaintiff has produced the documents of different property and claiming those to be

of suit premises.

20. When plaintiff claims that, all four structures of suit premises are protected and tolerated structures, there is no evidence on record to show that, all four structures were in existence prior to datum line. Moreover, there is no evidence that, all the alleged four structures are authorized structures erected/constructed after due permission of authority.

21. It is the case of plaintiff that, the Officers of defendants visited the suit premises on 28.12.2012 and 02.01.2013 asking plaintiff to vacate the suit premises. Chandrashekhar PW-1 has adduced evidence in respect of alleged incident dated 28.12.2012 only. There is no evidence regarding the alleged visit of Officers of defendants dated 02.01.2013.

22. Learned Advocate for plaintiff further submits that, since the defendants have not lead any evidence in rebuttal, adverse inference needs to be drawn against defendants. For this he has relied on **Vidhyadhar V/s. Mankikrao and Anr. AIR, 1999 SUPREME COURT 1441**. In the facts and circumstances of present case, as pleaded by plaintiff the initial burden rest upon him. It is for the plaintiff to establish his case by standing on his own legs. The onus would shift upon defendants only when plaintiff discharges his initial burden.

23. The name of person who allegedly visited and orally asked the plaintiff to vacate the suit premises has not been disclosed in the pleading and in the evidence. Defendant No.1 is the Government and the defendant No.2 is the Government Officer. As such it is not

necessary for the Government Officer to orally ask any person to vacate the premises in his possession. If at all the Officers of defendants would have really visited, they would have served notice upon plaintiff asking for vacating the suit property. Thus, there is no satisfactory evidence showing possession of plaintiff over the suit premises prior to datum line. There is no satisfactory evidence that, suit premises are protected and tolerated structures. There is no satisfactory evidence that, the Officers of defendants were going to demolish the suit premises without following due process of law. I, therefore, answer issue No.1 and 2 in the negative.

AS TO ISSUE NO.3 :-

24. The cause of action as alleged in the suit is dated 28.12.2012 and 02.01.2013. The suit is instituted on 03.01.2013. It appears that, suit was instituted in urgency and plaintiff took out Notice of Motion for urgent and immediate reliefs. It appears that, leave of the Court under Section 80(2) of C.P.C. was sought and that point was kept open. In these circumstances, it cannot be said that, suit is bad for want of notice under Section 80 C.P.C. I, therefore, answer issue No.3 in the negative.

AS TO ISSUE NO.4 :-

25. Defendants have taken a defence that, suit is not maintainable without seeking relief of declaration. The suit is for simpliciter injunction. Legally a plaintiff cannot file a suit only for declaration, when he is being able to seek further relief. However, there is no legal bar to institute the suit for simpliciter injunction. However,

present suit is for injunction in respect of immovable property. Plaintiff has tried to seek injunction without properly describing the suit property as required by Order VII, Rule 3 of C.P.C. Therefore, suit is not maintainable as framed. Hence, I answer issue No.4 in the negative.

AS TO ISSUE NO.5 :-

26. In view of forgoing discussion the plaintiff has failed to make out his case. Plaintiff has failed to establish obligation existing in his favour and breach of that obligation at the hands of defendants. Therefore, plaintiff is not entitled for injunction claimed.

27. During pendency of suit plaintiff has taken out Notice of Motion. Thereby plaintiff has prayed for re-construction of suit premises. Said Notice of Motion is tagged with the suit at the request of learned Advocate for plaintiff. Learned Advocate for plaintiff has relied on **Shivaji Balaram Haibatti V/s. Avinash Maruti Pawar, AIR, 2017 SUPREME COURT 5494**. In this case the Hon'ble Apex Court has held thus;

“28. It is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the Court cannot record any finding on the issues which are not part of pleadings. In other words, the Court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. Any finding recorded on an issue de hors the pleadings is without jurisdiction. Such is the case here.”

28. When the plaintiff is seeking for re-construction of suit premises there is no pleading in the plaint that the suit premises are

demolished during pendency of suit and therefore they required to be re-constructed. In view of above authority, the prayer in Notice of Motion cannot be considered. Apart from that, when plaintiff has failed to show that suit premises are protected and tolerated structures and when plaintiff has failed to describe the suit premises properly, he is not entitled for any relief. Hence, the following Order in answer to issue No.5.

ORDER

1. The suit is dismissed with Costs.
2. The decree be drawn up accordingly.
3. Notice of Motion No.873 of 2022 is also dismissed.

(Dictated and pronounced in open Court.)

(T. T. Aglawe)
Judge City Civil Court,
Borivali Division, Dindoshi.

Date : 28.04.2026

Dictated on : 28.04.2026
Transcribed on : 28.04.2026
Corrected on : 28.04.2026
Signed on : 28.04.2026

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 28.04.2026 Time : 05.28 p.m. UPLOAD DATE AND TIME	Mr. B. S. Pandit (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ Shri. T. T. Aglawe Court Room No.6
Date of Pronouncement of JUDGMENT/ORDER	28.04.2026
JUDGMENT/ORDER signed by P.O. on	28.04.2026
JUDGMENT/ORDER uploaded on	28.04.2026