

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3177 OF 2014

Shivprasad Ramkhilawan Gupta : Petitioner
versus
Mrs. Arti Poonam Sahu
Nee Arti Chandulal Gupta and ors. : Respondents.

Mr. Mohit Jadhav i/by Mr. Shailesh Kumar Rai for the Petitioner.
Mr. Prashant D Patil for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 07th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 13/02/2014 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai by which order the learned Judge has decided the preliminary issue viz. “Whether this Court has jurisdiction to try and decide the suit” and has ruled that the said Court has jurisdiction to try and decide the suit.

2 The dispute is in respect of the premises which had been allotted to the original Plaintiff as and by way of permanent alternate accommodation under a Slum Rehabilitation Scheme. It seems that the Petitioner herein who is the Defendant No.1 in the suit and who is the uncle of the original Plaintiff is claiming on the basis of the sale deed and power of attorney purportedly executed by the original Plaintiff in respect of the suit premises. The Plaintiff

has therefore sought a declaration which is contained in prayer clause (a) of the plaint which is to the following effect :-

“(a) That the Hon'ble Court be pleased to declare that the purported Sale Agreement dated 02/02/2009 and Power of Attorney dated 02/02/2009 are forged, sham, bogus and fabricated documents and the same be declared as null, void, bad in law and not binding upon the plaintiff.”

The said relief sought is amongst other reliefs which have been claimed in the said suit. The said other reliefs are inter-alia to the effect that the Defendants be evicted from the suit premises. The Defendant No.1 raised a preliminary issue as regards maintainability of the suit on the touchstone of Section 22 of the Slums Act.

3 The Trial Court considered the said application and having regard to the fact that the implementation of the SRA scheme is already complete, as also having regard to the fact that the Plaintiff is claiming declaration in respect of the documents which are mentioned in prayer clause (a) of the suit came to a conclusion that bar of Section 22 of the Slums Act would not come into play and no permission for filing of the suit was required from the Competent Authority. The Trial Court has accordingly ruled upon its jurisdiction and held that suit is as maintainable.

4 The learned counsel for the Petitioner Shri Jadhav would seek to

place reliance on the judgment of the Apex Court reported in **AIR 2011 SC 450** in the matter of **Laxmi Ram Pawar v/s. Sitabai Balu Dhotre & Anr.** The said judgment was rendered in the fact situation of the said case wherein there was a declaration of slum and therefore the Apex Court was of the view that having regard to the definition of the term “occupier”, the permission of the Competent Authority under the Slums Act was required to file a suit for eviction of the trespasser who has been inducted. In my view, the said judgment would have no application in the facts prevailing in the present case, as admittedly in the present case the SRA scheme has already been exhausted and permanent alternate accommodation has been allotted to the slum dwellers amongst whom was the Plaintiff. Hence the question of application of the Slums Act does not arise, and it is the City Civil Court which would have jurisdiction to decide the suit having regard to the reliefs sought therein.

5 In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]