

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(CIVIL APPELLATE JURISDICTION)

SECOND APPEAL NO. 501 OF 1993

Sadashiv Shripad Sathe,
since deceased through L.Rs

1A. Sau. Sadhana Balasaheb Anpat.

1B. Sau. Ratnamala Prakash Malkar
Since deceased by her proposed L.Rs

1B-1 Ms. Joyti Prakash Malkar

1B-2 Ms. Swati Prakash Malkar.

1C. Ms. Nilima Sadashiv Sathe,

1D. Kalpana Suresh Khare,

1E. Sau. Latika Sumant Waikar,

1F. Sau. Vaidya Anuradha Prasana.

1G. Mr.Pramod Sadashiv Sathe.

APPELLANT
(Org. Plaintiff)

...VERSUS...

1] The State of Maharashtra

2] The Collector of Pune,
Collector's Office, Pune-1,

3] The Tahsildar for Management
of Government Colonies,
Dattawadi, Pune-411 030.

RESPONDENTS
(Org. Defendants)

Shri Sandesh Patil, Advocate, I/b Shri Pawan S. Patil, Advocate, for
appellant
None for respondents.

CORAM: R. K. DESHPANDE, J.

DATE : 6th AUGUST, 2015 .

ORAL JUDGMENT

1] The trial Court passed a decree on 15.12.1984 in Regular Civil Suit No. 1532 of 1981, restraining the defendants by an order of perpetual injunction to evict the plaintiff from the suit premises in pursuance to the notice dated 23.07.1981 at Exh.36. In Civil Appeal No. 1231 of 1986, the lower appellate Court has by its judgment and order dated 17.09.1983, set aside the decree passed by the trial Court and the suit has been dismissed. The original plaintiff is, therefore, before this Court in this second appeal.

2] On 11.01.1994, this Court passed an order as under, framing the substantial question of law.

Heard Shri Naik for the appellant.

The appellant is a flood affected person

and is not yet rehabilitated.

The substantial questions of law are -

1. Whether the impugned notice of eviction is valid?

2. Whether the appellant is liable to be evicted from the suit premises.

Appeal admitted.

3] The controversy before the Courts below was whether the plaintiff has established his lawful possession of Nisen Hut No. 79-A on the basis of lawful allotment order and whether the plaintiff was entitled to prohibitory injunction against the respondents from evicting the plaintiff from the suit premises as per the notice dated 23.07.1981.

4] The trial Court relied upon the documents at Exhibits 33, 34 and 35 showing the entitlement of the plaintiff. Exh. 33 is the Flood Affected Family Card in which the name of the plaintiff appears. Exh. 34 is the certificate dated 13.09.1965 issued by the Mamlatdar, Puna City, certifying that the plaintiff was residing at House No. 120, Narayanpeth, Puna City, during Puna Floods of 12.07.1961 and he is the Flood Affected Person and his family consist of 9 persons including the head of the family. Exh.35 is the letter

of allotment dated 20.02.1980 in the name of the plaintiff in respect of the suit property. Exh. 38 is the letter issued by the Collector, Pune, to the Chairman of the Swayamsiddha Cooperative Housing Society, Nisen Hut, Pune on 11.11.1980, stating that, "as orally discussed with you, I recommend the name of Shri S.S.Sathe for giving membership in your Cooperative Housing Society, as he is flood affected person". Exh.39 is the letter dated 20.03.1981 issued by Shri Swayamsiddha Cooperative Housing Society, Pune, addressed to the plaintiff stating that the name of the plaintiff is placed on the Waiting List and after getting the land from the Government, final list of membership shall be prepared and in the Waiting List forwarded to the State Government, the name of the plaintiff is at Sr. No. 2. These are the documents relied upon by the trial Court.

5] The lower appellate Court has, without considering these documents, recorded the finding that there is no evidence on record to show that the house of the plaintiff collapsed or it was unfit for habitation and therefore, the plaintiff cannot acquire

any legal right to retain the possession of the suit Hut permanently. The findings are in total ignorance of the vital evidence brought on record and the findings recorded by the trial Court. The same cannot be sustained and is set aside, holding that the impugned notice at Exh. 36 for eviction is illegal and the plaintiff is entitled to relief as has been granted by the trial Court.

6] In the result, the appeal is allowed. The judgment and the order dated 17.09.1993 passed by the lower appellate Court in Civil Appeal No. 1231 of 1986 is hereby quashed and set aside. The judgment and order passed by the trial Court on 15.12.1984 in Regular Civil Suit No. 1532 of 1981 is restored. No order as to cost.

Consequently, the civil application, if any, does not survive.

JUDGE

Rvjalit