

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 871 OF 2012

Smt. Kausilyabai B. Jaiswal & Anr. .. Applicants
VS.
Smt. Rukmini K. Yerem & Anr. .. Respondents

Mr. D. P. Adarkar for Applicants.

CORAM : M. S. SONAK, J.
DATE : 13 JULY 2015

P.C. :-

1] This CRA challenges order dated 31 August 2012 made by the appeal Court dismissing the applicants appeal against the order dated 14 July 2011 made by the trial Court.

2] The respondent landlords instituted RAE Suit No. 752 of 1995 against the applicants, *inter alia* on the ground that the applicant has erected upon the suit premises a permanent structure without respondent landlords consent given in writing. In such a suit, the applicants to begin with raised a preliminary objection under section 9A of the CPC questioning the jurisdiction of the trial Court on the ground that the suit premises had been declared as a slum and no leave as contemplated by section 22 of the Maharashtra Slum Area (Improvement, Clearance and

Redevelopment) Act, 1971 ('Slum Act') was obtained prior to the institution of the suit. Such application was dismissed by the trial Court. The applicants did not challenge such dismissal before the appeal Court. The applicants, contested the suit on its merits.

3] The trial Court by judgment and decree dated 26 July 2010 decreed the suit relying *inter alia* upon the evidence of the Court Commissioner that indeed, permanent structure was erected by the applicants upon the suit premises without the written consent of the landlords.

4] The applicants thereafter applied for setting aside the judgment and decree dated 26 July 2010, on the ground that the same was an *ex parte* decree. The decree dated 26 July 2010 was not in effect, an *ex parte* decree. Further, such application was made, because the suit had proceeded without the applicants having filed any written statement on record in the suit. The application was ultimately dismissed by the trial Court on 14 July 2011. As against the same, the applicants instituted appeal no. 54 of 2011.

5] The appeal Court vide judgment and order dated 31 August 2012 has dismissed the appeal. In dismissing the appeal, the

appeal Court has examined the issue as to whether any case was made out by the applicants for permission to file a written statement. The appeal Court found that no such case was made. The record also reveals that the applicants were represented by an Advocate and said Advocate, to begin with did raise preliminary objection under section 9A of the CPC. Even after, such objection was dismissed, the applicants did take part in the proceedings and contested the matter on its merits. The judgment and decree of the trial Court is not on the basis of lack of any defence on the part of the applicants with regard to the erection of the permanent structure, but rather, the decree made by the trial Court is based upon the evidence on record, including *inter alia* evidence of the Court Commissioner. There is no perversity in the finding of fact recorded by the trial Court and confirmed by the appeal Court.

6] The learned counsel for the applicants however contended that the objection based under Section 22 of the Slum Act is an objection which goes to the root of jurisdiction and therefore, the applicant can raise the same even at this stage. In the facts and circumstances of the present case, the objection, at the highest can be regarded as one involving mixed questions of fact and law. On the basis of the material on record, it cannot be said that the suit premises were covered by the notification declaring the area as

slum area and that the suit was barred under section 22 of the Slum Act. Such objection was rejected by the trial Court and significantly, no appeal was instituted by the applicants as against such rejection. Even in the appeal which was ultimately instituted by the applicants, there was no challenge to the order rejecting preliminary objection raised by and on behalf of the applicants.

7] In the aforesaid circumstances, it cannot be said that there is any error of jurisdiction or that the trial Court and the appeal Court, in the exercise of their jurisdiction have acted with illegality or material irregularity. The CRA is accordingly dismissed. Interim order stands vacated.

(M. S. SONAK, J.)

Chandka