

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

SECOND APPEAL NO. 446 OF 2015
WITH
CIVIL APPLICATION NO. 10886 OF 2015

Maheboobkhan s/o Dullekhan, deceased,
through legal representatives :-

1. Javedkhan s/o Maheboobkhan
Age 46 years, occup. Business,
R/o Vidyanagar, Parbhani
2. Amjadkhan s/o Maheboobkhan,
Age 40 years, occup. Labour,
R/o Vidyanagar, Parbhani
3. Mujayadkhan s/o Maheboobkhan,
Age 32 years, occup. Labourer,
R/o Vidyanagar, Parbhani
4. Kausarbanu d/o Maheboobkhan,
Age 48 years, occup. Household,
R/o Nanalpeth, Parbhani
5. Shayadabegum d/o Maheboob Khan,
Age 50 years, occup. Labourer,
R/o Vidyanagar, Parbhani
6. Sajedabegum d/o Maheboob Khan,
Age 30 years, occup. Labourer,
R/o Vidyanagar, Parbhani

versus

The Commissioner,
Municipal Corporation, Parbhani
Dist. Parbhani

.. Respondent

Mr. V. P. Latange, Advocate for appellants
Mr. Satyajeet S. Bora, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
11TH JANUARY, 2016

ORAL JUDGMENT:

1. Heard learned counsel on respective sides.
2. Appellants - plaintiffs had instituted regular suit bearing no. 24 of 2011 before the court of civil judge, junior division (9th court), Parbhani, seeking declaration that they are entitled to continuation and renewal of rent deed in respect of property situated within municipal limits of Parbhani i.e. house no. 829 located in ward no.2, Nandkheda road, Parbhani and perpetual injunction restraining the respondent-defendant-corporation from interfering with possession of plaintiffs over said property.
3. The facts which are not much in dispute are that, father of the plaintiff Maheboobkhan had come in possession of suit property under a letter issued by defendant-corporation (its predecessor) and had continued the same for a long time. After father's death, plaintiffs continued in possession of the property and in 1988 they had applied for carrying out certain temporary construction and as such a permission is said to have been granted. Thereafter, the plaintiffs continued to pay rent @ Rs.75/- per month to the corporation which is being accepted. It

was around 2010, a notice came to be issued to the plaintiffs under the provisions of then operating Municipalities Act, cancelling permission and demanding back possession.

4. Respondent-defendant contends that against the notice issued in 2010, appellants-plaintiffs had been before this court in a writ petition. However, having regard to the suit filed by the plaintiff, writ petition had not been entertained by this court.

5. In the suit, the plaintiffs had claimed reliefs as have been referred to hereinabove. The trial court had framed issues with respect to legality of tenancy claimed by plaintiffs over suit property, entitlement to relief of declaration and about disturbance by defendants to claimed possession of the plaintiffs. The trial court found that it cannot be said that the plaintiffs are lawful tenants over suit property and as such would not be entitled to relief of declaration claimed and has further found that they do not have any legal right to enjoy suit property and the notice issued, under the circumstances, would not tantamount to disturbance in the possession of the plaintiffs and as such dismissed the suit on 12-07-2013.

6. The plaintiffs, as such, had been in appeal under regular civil appeal no.134 of 2013 before the district court. The appellate court after hearing parties, dismissed the appeal under

order dated 02-03-2015, finding that the plaintiffs cannot be said to be legally entitled to renewal of alleged rent deed of 1968 nor they are entitled to retain possession and enjoyment of suit property and did not find that any error had been committed by the trial court.

7. Learned counsel Mr. Latange appearing on behalf of the appellants submits that in the face of undisputed factual background about father of the plaintiff being into possession in 1968 under a rent deed and thereafter construction permission being granted, abrupt termination of relationship by issuing show cause notice in 2010 is an arbitrary act. It is not the case that the property does not belong to defendant but it is also not the case that the plaintiffs can be said to have encroached over the property or, for that matter, their possession is causing nuisance to the public at large. It is submitted that various interests have been developed in the property during the course of this long tenure which are to put in peril owing to show cause notice.

8. On the other hand, learned counsel Mr. Satyajeet Bora appearing on behalf of respondent – defendant submits that the action demanding possession pursuant to show cause notice is in accordance with law and powers vested in the defendant by the

relevant statute. On facts, he submits that although it is being contended by plaintiff that it was lease, in fact, it is not so. He submits that plaintiff's deceased father had been put in possession under a letter permitting possession only for a year and no further. Plaintiffs' contention of thereafter being in continuous possession would not in any way affect the powers and authority of the corporation. He refers to section 92 of the Maharashtra Municipalities Act, 1965 and states that the reason that the plaintiffs continued to remain in possession of the property would not legalise their possession. He submits that the submissions by appellants with regard to interests having been developed and plaintiffs having been in possession of the property are the submissions outside scope of suit and cannot be taken into account.

9. It would be pertinent to note that during the course of submissions, Mr. Latange submitted that there had been a resolution passed by the State government in 1995 to legalise possession of the occupants who have been in possession of the government lands for a longer period. He submits that corporation had allowed such persons to continue to remain in the property.

10. Mr. Bora, however, submits that said government resolution had never been referred to earlier in the matter and the same relates to government lands. There is no pleading in this respect nor such a plea had been taken in the suit or even while appeal before the district court was pending. He further points out that said government resolution had at no point of time been relied on by the appellant nor any specific case is being referred to in respect of following up of said resolution.

11. Mr. Bora further submits that the second appeal has been rendered infructuous additionally for the reason that temporary structure over suit property has been removed and the plaintiffs have been dispossessed.

12. Looking at aforesaid, legality of the action taken by defendant-corporation may not be faulted with. Additionally, plaintiffs appear to have been dispossessed.

13. Having regard to aforesaid, I do not see that second appeal is likely to serve any purpose. Under the circumstances, it is not being entertained and is dismissed.

14. At this stage, Mr. Latange, learned counsel for the appellants submits that it may be left open to the appellants to make application afresh to the corporation and the corporation

may take action on the same in accordance with law. It is for the appellants to make application as desired to corporation and it is for the corporation to decide on the same.

15. Civil application does not survive and stands disposed of.

SUNIL P. DESHMUKH, J.

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