

Sequeira

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

***SECOND APPEAL NO. 227 OF 2014
Along with
CIVIL APPLICATION NO.582 OF 2014***

Shri Nandu Namdev Bhosale. ... Appellant
V/s.
Commissioner of Pimpri Chinchwad
Municipal Corporation & ors. ... Respondents.

Mr.V.D.Raut, for the Appellant / Applicant.
Mr.G.H.Keluskar, for Respondent Nos.1 & 2.
Ms.Rushita Jain i/b Law Global, for Respondent No.3.

***Coram : N.M. Jamdar, J.
Tuesday 28 June, 2016.***

P.C. :-

The Appellant challenges the concurrent Judgment and Order passed by the Civil Judge Junior Division, Akurdi, Pune and the District Judge, Pune whereby the Suit and Appeal filed by the Appellant have been dismissed.

2. The Suit was filed by the Appellant for seeking an order of injunction against the Respondents. According to the Appellant he was residing in a slum at Ajanta nagar, Pimpri within the limits of

Pimpri Chinchwad Municipal Corporation. In view of this hutment he was allotted a transit accommodation numbered as C-242. It was his case that the Respondent No.3 along with the officers of the Municipal Corporation was trying to dispossess the Appellant even though the Appellant was lawfully entitled to occupy those premises. The learned Civil Judge after considering the rival contentions came to the conclusion that the Appellant had not shown his right to the premises and was trying to take advantage of a similarity in name of some other person. The Respondent No.3 produced certain documentary evidence to show that a person whose name was same had already expired. The learned Civil Judge after considering this material, dismissed the Suit. An Appeal was filed. The learned District Judge confirmed the finding of the trial Court. The learned District Judge held that the Appellant did not produce any documents, neither in the trial Court nor in the Appeal, and dismissed the Appeal.

3. The learned counsel for the Appellant submitted that various documents, which are sought to be tendered across in an additional compilation, were produced before the trial Court. He sought to rely upon an application made by the Appellant in which it was stated that the documents produced be returned to him. The learned counsel contended that in the examination in-chief the documents have been referred. The learned counsel for the Respondent –

Corporation submitted that though it is so mentioned these documents were never exhibited and in fact in the cross-examination of Appellant has admitted to this position.

4. Both the Courts have declined to entertain the claim of the Appellant on the ground that Appellant has not been able to show his right to the suit property. If the Appellant is occupying premises, stated to be allotted by Municipal authority, the Appellant would have documentary evidence in that regard. Merely because it is mentioned in examination-in-chief, unless the documents are exhibited and considered and the Respondents are given opportunity to meet the same they cannot be a foundation for the claim.

5. In fact the Appellant has admitted in the cross-examination that he is not going to produce these documents. After the Civil Judge declined to entertain the Suit of the Appellant on the ground that cogent documentary material is not produced, neither any specific argument was made before the District Court nor it was stated in the Appeal Memo that a particular document, which was exhibited, was not considered. This would have been the first argument if that was the position. Therefore, in view of the findings recorded by both the Courts on the ground that Appellant has failed to produce sufficient material on record no error of law can be found in the impugned decision. The Appeal therefore, cannot be

entertained.

6. The learned counsel for the Appellant has submitted that the matter should be remanded and same request was made before the District Court. The learned District Judge has considered this request. The learned Judge has clearly recorded that the Appellant was not restricted from bringing on record the material evidence to establish his case. Once the trial Court had rendered a finding that documents were not produced on record, necessary application ought to have been made for bringing those documents on record or atleast asserting in the appeal memo that a particular document which was on record was not produced. Neither steps have been taken therefore, request for remand cannot be considered.

7. The Appeal is accordingly dismissed. The Civil Application also stands disposed of.

8. At this stage, the learned counsel for the Appellant seeks extension of the interim order, the same is continued for a period of eight weeks on a condition that the Appellant will not create any third party rights or part with possession. The undertaking to be filed within period of two weeks from today and if no contrary order is passed, the Appellant will vacate the premises after the expiry of period of eight weeks.

(N.M. Jamdar, J.)