

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 493 OF 2015

Dr Abdul Hafiz Ab. Aziz

...Applicant

Versus

Mohd. Ameen Haji Fakir Mohammed

And Ors

...Respondents

....

Mr. Mahendra N. Sandhyanshiv, Advocate for the Applicant.

Ms. Pooja Singh i/b. Mr. N. R. Bubna, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 5th July, 2016

P.C.

1. Heard Mr. Mahendra Sandhyanshiv, learned Counsel for the applicant and Ms. Pooja Singh, learned Counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant No.1' has challenged the judgment and decree dated 22.4.2013 passed by the learned Ad-hoc District Judge-2 Malegaon in Regular Civil Appeal No.187/2001. By that order, the learned District Judge allowed the appeal preferred by

the original plaintiff and quashed and set aside the judgment and decree dated 15.9.2001 passed by learned 5th Jt. Civil Judge, Junior Division, Malegaon in Regular Civil Suit No.265/1997. The learned District Judge decreed the suit and issued permanent injunction against respondents No.1 to 5(Defendants No.1 to 4) from recovering rent and possession of the tenanted premises from any of the tenants in the suit property without due process of law. Defendant No.5 is restrained from paying the rent as well as parting the possession of the tenanted premises to defendant Nos.1 to 4.

3. In support of this application, Mr. Sandhyanshiv submitted that the learned trial Judge dismissed the suit by holding that as per Section 41(h) of the Specific Relief Act, 1963 (for short, 'Act'), the relief of injunction cannot be granted when equally efficacious relief can be obtained by the plaintiff by other usual mode of proceedings. Learned trial Judge observed that the plaintiff has to institute suit for recovery of possession and rent against the defendants. As the plaintiff did not adopt these proceedings, in view of Section 41(h) of the Act, the relief of injunction cannot be granted. He invited my attention to issues

No.2 and 3 and the findings recorded by the learned trial Judge against these issues from paragraphs-10 to 14 and submitted that for the reasons recorded by the learned trial Judge in these paragraphs, the learned District Judge committed serious error in allowing the appeal.

4. On the other hand, Ms. Singh supported the impugned order. She invited my attention to the findings recorded by the learned District Judge in paragraphs-9 and 10 and submitted that no case is made out for invocation of powers under Section 115 of C.P.C..

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the father of defendants No.1 to 4 had executed sale deed in favour of the plaintiff on 17.6.1975. It is also not in dispute and is a matter of record that defendants No.1 to 4 had instituted Regular Civil Suit No.129/1975 against the plaintiff as also his father for declaration of ownership. Said suit was dismissed. Mr. Sandhyanshiv submitted that even the appeal preferred by defendants No.1 to 4 was subsequently dismissed.

6. In paragraph-9, the learned District Judge noted these

facts and observed that as the suit instituted by defendants No.1 to 4 was dismissed, defendants No.1 to 4 had no locus to institute suits against the tenants. In paragraph-10, the learned District Judge noted that the defendants/respondents No.6, 7, 8, 9, 12 and 13 have accepted the plaintiff as their landlord and handed over possession of the tenanted premises to him.

7. As the father of defendants No.1 to 4 had sold the suit premises to the plaintiff on 17.6.1975 as also the suit instituted by defendants No.1 to 4 is dismissed by the Court and the appeal is also dismissed by the Appellate Court, I do not find that the learned District Judge committed any error in decreeing the suit. Hence no case is made out for invocation of powers under Section 115 of C.P.C.. Application fails and the same is dismissed.

(R. G. KETKAR, J.)