

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2693 OF 2016

Amrut Rakhmasa Kshatriya ... Petitioner
Vs.
Barjore Rustam Joshi and others ... Respondents

Mr. Amey Deshpande for Petitioner.
Mr. Girish Agrawal for Respondents.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 07, 2016

P.C. :

Heard Mr. Deshpande, learned Counsel for the petitioner and Mr. Agrawal, learned Counsel for the respondents at length. Rule Mr. Agrawal waives service for respondents. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the - (i) judgment and order dated 05.12.2015 below exhibit-159, (ii) judgment and order dated 05.12.2015 below exhibit-160, (iii) judgment and order dated 08.01.2016 below exhibit-173, (iv) judgment and order dated 01.02.2016 below exhibit-182 and (v) judgment and order dated 17.02.2016 in Special Civil Suit No.205 of 2008 passed by the learned 5th Joint Civil Judge, Senior Division, Nashik.

3. By order dated 05.12.2015 below exhibit-159, the learned trial Judge rejected the application for grant of permission to lead secondary evidence in respect of affidavit dated 29.10.1979. By order dated 05.12.2015 below exhibit-160, the learned trial Judge rejected the

application made by the plaintiff to exhibit the affidavit dated 29.10.1979 in view of Section 90 of the Indian Evidence Act, 1872 on the ground that document is 30 years old. By order dated 08.01.2016 below exhibit-173, the learned trial Judge rejected the application made by the plaintiff for leading secondary evidence in respect of the return filed under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976. By order dated 01.02.2016, the learned trial Judge directed the plaintiff to file necessary application along with affidavit recording earlier evidence and its contents. Finally, by order dated 17.02.2016, the learned trial Judge closed the evidence of the plaintiff and posted the matter for evidence of defendants.

4. Learned Counsel for the parties submit that the impugned orders may be set aside without recording any reasons and directing the trial Court to decide applications exhibit-159, 160, 173 and 182 afresh. Mr. Deshpande assures that plaintiff will not seek any undue adjournment and will extend full co-operation for the early disposal of the Suit. Assurance given by Mr. Deshpande is accepted.

5. In view thereof, Petition is disposed of in the following terms:

a. judgment and order dated 05.12.2015 below exhibits-159 and 160, judgment and order dated 08.01.2016 below exhibit-173 and judgment and order dated 01.02.2016 below exhibit-182 are quashed and set aside and Applications below exhibits-159, 160, 173 and 182 are restored to the file of the trial Court.

b. As I am directing the trial Court to decide the applications afresh, the order dated 17.02.2016 closing the evidence of plaintiff also needs to be set aside and is accordingly set aside;

c. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)