

Sequeira

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

***SECOND APPEAL NO. 375 OF 2016
Along with
CIVIL APPLICATION NO. 706 OF 2016.***

Shri Mahadev Ganpat Khadtare
Died through Legal Heirs
-Shri Sanjay Mahadev Khadtare.

... Appellant

V/s.

Sangola Nagarparishad Sangola
Through its Chief Officer & ors.

... Respondents.

Mr.Ajay Joshi, for the Appellant / Applicant.
Mr.V.S.Talkute a/w Mr.D.W.Bhosale, for Respondent No.2.
Mr.D.K.Bhosekar, for Respondent Nos.3 & 4.

***Coram : N.M. Jamdar, J.
Wednesday 15 June, 2016.***

P.C. :-

By this Appeal the Appellant challenges the concurrent Judgment and Order passed by the learned Civil Judge, Junior Division Sangola and District Judge, Pandharpur dismissing the Suit and Appeal filed by the Appellant.

2. The Appellant filed a Regular Civil Suit No.70 of 2001 against the Respondent No.1 seeking an order of injunction that suit property should

not be demolished because the Respondent-Sangh is taking advantage of the incorrect entries in the survey and is threatening to dispossess the Appellant. The Appellant also filed Regular Civil Suit No.98 of 2001, which is the present suit against the Sangh as well as Municipal Council Sangola in which the Appellant sought an order of injunction restraining the Respondent-Municipal Council from issuing permission for construction in the suit property in favour of the Respondent - Sangh.

3. The Suit No.70 of 2001 and 98 of 2001 were decided against the Appellant. Against the disposal of Suit No.70 of 2001, the Appellant filed Regular Civil Appeal No.5 of 2009 in District Court. Against dismissal of Regular Civil Suit No.98 of 2001 the Appellant filed Regular Civil Appeal No.6 of 2009. Both the Appeals were disposed of by the learned District Judge on 4 March 2016. As regards the Appeal No.6 of 2009 arising from Regular Civil Suit No.98 of 2001 which is subject matter of the present appeal, the Appeal was dismissed by the learned District Judge. In Regular Civil Appeal No.5 of 2009 the learned District Judge remanded the proceedings to the learned Civil Judge to carry out demarcation after hearing both the sides.

4. I have heard the learned counsel for the parties. Two suits have been filed for injunction, The injunction in the present suit that is sought is that the Respondent/Council should not give permission to the Respondent-Sangh for construction. Both the Courts have rendered a finding of fact that the construction is now complete. Therefore the learned District Judge has rightly come to the conclusion that the cause of

action in the present suit does not survive. The dispute that is raised by Appellant is whether the construction is on Survey No.2963 or 2962. Whether the construction is on CTS No.2962 or on 2963 is the subject matter of Suit No.70 of 2001 which is remanded for *denovo* consideration. In the circumstances, it is not necessary to entertain this Appeal as the Appellant can always join the Municipal Council in Suit No.70 of 2001 and take up contentions which are sought to be raised in the present Appeal in the said pending Suit, since both the Courts have disposed of the present Suit and Appeal filed by the Appellant primarily on the ground that the cause has become infructuous. It is also the contention of the learned counsel for the Respondents that the Appeal has become infructuous. Therefore, the issues which are sought to be raised by the learned counsel for the Appellant on merits, cannot be said to be concluded. The Appellant therefore, is at liberty to carry out necessary amendment in the Regular Civil Suit No.78 of 2001 and to join the Municipal Council as a party respondent. It is always open to the Appellant in Regular Civil Suit No.70 of 2001 to move such applications which would be considered on their own merits. This will also avoid multiplicity of proceedings and the dispute between the parties can be considered in Regular Civil Suit No.70 of 2001.

5. The learned counsel for the Respondent is not averse to this cause of action.

6. In the circumstances, it is not necessary to entertain the Appeal. The Appeal is accordingly disposed of.

7. All contentions of the parties are kept open to be agitated in Regular Civil Suit No.70 of 2001.
8. Civil Application stands disposed of.

(N.M. Jamdar, J.)