

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6357 OF 2015

Damayanti Ramesh Bhudhadev (Thakkar) and others ... Petitioners
Vs.
Devaram Bhomaji Sharma and another ... Respondents

Mr. Chetan C. Agrawal a/w. Mr. Naresh S. Debadwar for Petitioners.
Mr. D. S. Mondkar i/b. Mr. S. S. Shetye for Respondent No.1.
Ms Pooja Singh i/b. Mr. N. R. Bubna for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 29, 2016

P.C. :

Heard Mr.Agrawal, learned Counsel for petitioners, Mr. Mondkar, learned Counsel for respondent No.1 and Ms Singh, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 28.07.2014 passed by the learned 4th Joint Civil Judge, Junior Division, Bhiwandi below exhibit-5 in R.C.S.No.1148 of 2013 as also the judgment and order dated 24.03.2015 passed by the learned District Judge-10, Thane in Miscellaneous Civil Appeal No.127 of 2014. By these orders, the Courts below partly decreed the application exhibit-5 filed by respondent No.1, hereinafter referred to as 'plaintiff', and rejected the prayer made by the plaintiff for injunction restraining defendant No.8 Corporation from demolishing the suit property. The Courts below issued injunction restraining defendants No.1 to 7 from creating party interest during the pendency of the appeal.

3. In support of this Petition, Mr. Agrawal strenuously contended

that the Courts below were not justified in issuing injunction restraining defendants No.1 to 7 from creating third party interest in the suit property. He submitted that in fact, the suit property had become dangerous and the same was demolished by the defendant No.8 Corporation on 05.10.2013. Plaintiff had surrendered tenancy in respect of the suit premises in the year 2002 and permanently shifted to Rajasthan. As the suit property is demolished, the tenancy of the plaintiff stands extinguished. He, therefore, submitted that the Courts below were not justified in issuing injunction.

4. While confirming the order of the trial Court, the learned District Judge referred to the decision of the Apex Court in the case of ***Shaha Ratansi Khimji and Sons Vs. Proposed Kumbhar Sons Hotel P. Ltd.***, AIR 2014 SC 2895. As two decisions of the Apex Court namely, ***Vannattankandy Ibrayi Vs. Kunhabdulla Hajee***, (2001) 1 SCC 564 and ***T. Lakshmipathi Vs. R. Nithyananda Reddy***, (2003) 5 SCC 150 had taken inconsistent view, the matter was referred to the larger Bench. The larger Bench has approved the decision in ***T. Lakshmipathi*** (*supra*) and opined that decision rendered in ***Vannattankandy Ibrayi*** (*supra*) does not lay down the correct law. In other words, merely by demolition of the suit premises, the tenancy rights are not extinguished. It is in that context, the Courts below allowed application made by the plaintiff partly and issued injunction restraining defendants No.1 to 7 from creating third party interest during the pendency of the appeal. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)