

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Civil Revision Application NO. 490 OF 2015**

|                                |                |
|--------------------------------|----------------|
| Sunanda Sadanand Gawade        | ...Applicant   |
| <i>Versus</i>                  |                |
| Manohar Vinayak Chaubal        |                |
| (since Deceased) Through L.Rs. | ...Respondents |

....  
Ms. N.S. Moily, Advocate for the Applicant.  
Mr. Rajesh Datar, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 02<sup>nd</sup> August, 2016

P.C.

1. Heard Ms.N.S. Moily, learned Counsel for the applicant and Mr.Rajesh Datar, 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 the 'plaintiff', has challenged the judgment and decree dated 16.9.2003 passed by the learned Judge, presiding over Court Room No.20 of Court of Small Causes at Mumbai in R.A.E. & R. Suit No.538/1152 of 1994 as also the judgment and

decree dated 3.8.2013 passed by the Appellate Bench of the Small Causes Court at Mumbai in (A-1) Appeal No.748 of 2003. The learned trial Judge dismissed the suit mainly on the ground that the defendant has established that the suit premises is situate in an area which is declared as a slum area under the provisions of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (for short, 'Act'). Aggrieved by that decision, the plaintiff herein preferred appeal which is dismissed by the Appellate Court also upholding the finding of the trial Court that the suit premises is situate in an area which is declared as a slum area under the provisions of the Act.

3. In support of this application, Ms. Moily has taken me through

(i) copy of the plaint and in particular the description of the premises in dispute, namely, room No.1 in Samata Society at Nehru Nagar, Kanjur Marg (E), Mumbai – 400 078,

(ii) written statement filed by the defendant. She submitted that though the defendant came with the case that the suit premises

is situate in a slum area vide notification dated 7.2.1977, the defendant also did not disclose C.T.S. number or survey number on which the suit premises situate,

(iii) evidence of PW-1 as also evidence of defendant (DW-1) and DW-2 Ms.Geeta Gavankar, working in the office of Deputy Collector (Encroachment), Kurla No.2. She submitted that defendant No.2 admitted that she has no personal knowledge about the declaration of C.T.S. which were declared as a slum area in the year 1977.

4. She submitted that the burden was on the defendant to establish that the suit premises is situate in an area which is declared as a slum area. The defendant failed to discharge the burden. The Courts below were not justified in dismissing the suit.

5. On the other hand Mr. Datar supported the impugned orders. He submitted that in paragraph-2 of the examination-in-chief PW-1 admitted that the suit premises is situate in C.T.S. No.1291. DW-2 Ms.Geeta Gavankar deposed that City Survey No.1276 and C.T.S. No.1291 are declared as slum area in view of

notification dated 17.2.1977. He submitted that aggrieved by this notification, one Arun Patil preferred appeal before the Slum Tribunal. The Tribunal quashed the declaration dated 17.2.1977 with respect to the property of appellant therein, namely, Arun Patil. In other words, the notification in respect of rest of the area was not set aside.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The Courts below have dismissed the suit on the ground that the suit premises is situate in C.T.S. No.1291 which is declared as a slum. In view of Section 22 of the Act in the absence of permission from the Competent Authority, suit is not maintainable. The moot questions are whether the suit premises is situate in C.T.S. No.1291 and whether said declaration is still in force or not.

7. Plaintiff examined herself as PW-1. In paragraph-2, she admitted that the suit premises is situate in C.T.S. No.1291. DW-2 Geeta Gavankar deposed that City Survey No.1276 and C.T.S. No.1291 are declared as slum in view of notification dated 17.2.1977. She produced photocopy of the gazette notification at

Exhibit-11. By consent of the parties, said notification was admitted in evidence.

8. The Courts below have concurrently found that the suit premises is in an area which is declared as a slum area. From paragraph-18 to 29, Appellate Court has considered this aspect. In paragraph-20, Appellate Court noted that from notification dated 17.2.1977 C.T.S. No.1291 is having an area of 1811.9 sq. mtrs. Mr. Arun Patil had preferred appeal No.60/1982 challenging notification in respect of his property which is including in C.T.S. No.1291. Appellate Court observed that the entire C.T.S. was not the subject matter of the appeal and reproduced the operative part of the order which reads thus:

“ Appeal No.60 of 1982 is allowed.  
Declaration dated 17.02.1977  
published in Government Gazette of the  
same day **with respect to appellant's  
property involved in this appeal is set  
aside.**”

[Emphasis supplied]

9. In paragraph-22, Appellate Court noted that the notification was partially set aside by order dated 12.7.1982 in respect of only that part of C.T.S. No.1291 which was belonging to Arun Patil. It was further observed that it is not the case of

the petitioner/plaintiff that she had filed appeal challenging the notification dated 17.2.1977. The appellant also did not produce any other judgment or order showing that the part of C.T.S. No.1291 other than that of Arun Patil also has been excluded from the slum area.

10. Thus, the Courts below after appreciating the evidence on record have concurrently held that the suit premises is situate in C.T.S. No.1291 in respect of which notification is still in force. In view thereof, I do not find that the Courts below committed any error in dismissing the suit. Hence, application fails and the same is dismissed. Applicant/plaintiff is permitted to withdraw the amount deposited by the respondents in the Small Causes Court unconditionally.

(R. G. KETKAR, J.)

Deshmane (PS)