

JPP

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

SECOND APPEAL NO. 422 OF 2013

Mr. Lachhiyabhai Dharmabhai Gavit
Aged about 72 yrs. Occ. Agriculture
R/o. Khutli, Devachimal,
Dadra & Nagar Haveli.

... Appellant.
(Orig.Plaintiff)

V/s.

1. Mr. Dhavaliabhai Dharmabhai Gavit,
Aged about 70 yrs. Occ. Agriculture
2. Mr. Kakad Dhavaliabhai Gavit,
Aged about 42 yrs. Occu. Agriculture

Both residing at Khutil, Vevachimal
Dadra and Nagar Haveli.

... Respondents.

Mr. P.N. Joshi a/w. Pratik Rahade for the Appellant.
Ms. Prabha Badadare a/w. Omkar Nagvekar for Respondents.

CORAM : N.M. Jamdar, J.

30 June, 2016.

P.C. :-

By order dated 10 September 2014 the Appeal was directed to be taken up for final disposal. Accordingly, the Appeal is taken up for disposal.

2. Admit on the following question of law :-

(i) Whether both the Courts were right in holding that the Suit filed by the Appellant is barred by the provisions of Section 47 of the Dadra & Nagar Haveli Land Regulations Act, 1971 ?

3. Printing of paper-book dispensed with.

4. The Appellant filed a Regular Civil Suit bearing No.1 of 2011 in the Court of Civil Judge, Dadra & Nagar Haveli at Silvassa for a declaration that the order dated 25 June 1997 passed by the Land Reforms Officer is void and without jurisdiction. A declaration of ownership in favour of the Appellant and directions to the Respondents to hand over possession and permanent injunction was also sought.

5. The Appellant and Respondent No.1 are brothers. The dispute between the parties is in respect of the property situated at Village Khutli in Silvassa. It is the contention of the Appellant that on 21 March 1975 an enquiry by the Land Reforms Officer was held, which culminated in favour of the Appellant. However, subsequently, on an application filed by the Respondents, the Land

Reforms Officer reviewed the said order on 24 June 1997 and setting aside the order dated 21 March 1975, taking away the occupancy rights accrued in favour of the Appellant. The Appellant challenged this action by filing a Civil Suit. In the plaint the Appellant referred to the bar under Section 47 of the Dadra & Nagar Haveli Land Reforms Regulation, 1971 (the Regulations) and stated that since the order is void, the bar is not applicable. The Suit was instituted on 3 January 2011. Written statement was filed by the Respondents in which contention was raised that the Suit is not maintainable in view of bar of Section 47 of the Regulations. The averments in the plaint on merits were denied and it was contended that the order passed by the Officer is legal and proper.

5. The learned Civil Judge, by order dated 16 January 2013 answering the preliminary issue, held that the suit is not maintainable since it is been barred by Section 47 of the Regulations. The learned Civil Judge held that, since the Appellant had challenged the order of 25 June 1997 passed by the Land Reform Officer as well as mutation entry, the Civil Court has no jurisdiction. The Appellant thereafter filed an Appeal in the District Court, Silvassa. The learned District Judge confirmed the finding of the learned Civil Judge and dismissed the Appeal by order dated 13 March 2013.

6. I have heard the learned Counsel for the parties.

7. As regard the order passed by the learned Civil Judge, there is hardly any discussion of the various facets of the matter that arise in such eventuality. The learned Civil Judge has taken a rather simplistic view that since the order is passed by the Land Reform Officer and the mutation entry is challenged, the jurisdiction of Civil Court is barred. The learned District Judge, apart from this reasoning has taken a view that since an Appeal is provided against the order passed by the Land Reforms Officer, the regulations are code in itself.

8. It is the settled law that the bar of jurisdiction of a Civil Court under Section 9 of the Code of Civil Procedure, 1908 is not be lightly inferred. Factum of jurisdiction will depend on the averments made in the plaint. In the case of *Dhulabahi v/s. State of Madhya Pradesh reported in 1969 – AIR (SC)-0-78*, the Apex Court has laid down that merely because an enactment excludes jurisdiction of the Civil Court, does not mean in all circumstances that the Suit is not maintainable. One such circumstances is under the order impugned is nullity and passed outside purview of the enactment.

9. In the present case an enquiry was conducted under Section 22 of the Regulation which culminated in a final order on 21 March 1975. By this order, occupancy rights were granted in favour

of the Appellant. The Respondents made an application on 5 February 1997. One of the ground taken by the Respondents that he was minor when order dated 21 March 1975 was passed. It is the case of the Appellant that the Land Reforms Officer could not have reviewed its earlier order. If the Regulations are perused, power is conferred on the Land Reforms Officer under Section 22 to determine and grant occupancy rights. The scheme of the Act does not indicate that there is any power of review. The learned Counsel for the Respondents contended that what was done by the Land Reforms Officer is not a review of the order but only correcting the earlier order passed. The question at this stage is whether on the pleadings made in the plaint, the Suit can be held to be maintainable. The Appellant has categorically asserted that the order passed by the Land Reforms Officer is not within the ambit of the Regulations. The perusal of the Regulations fortifies this assertion. What was the nature of the order passed by the Land Reforms Officer will be the subject matter of debate in the Suit but at this stage the question is whether the Suit can be dismissed on the ground not maintainable. If the action taken lies outside the enactment, then the provision in such enactment which bars the jurisdiction of the Civil Court cannot apply to challenge the action taken outside the scope of the enactment. There is a clear assertion in the plaint that the action of the Land Reforms Officer is void and therefore the bar under Regulations will not apply.

10. It is the learned Counsel for the Respondents and also which is the finding of the learned District Judge that the remedy of Appeal is provided. The Appeal is provided against the orders passed under Section 22 of the Regulations. If the order under challenge is not under Section 22 of the Regulations, then there is no question of any Appeal. Consequently, the argument that the Regulations being a code in itself, does not arise. Even assuming the Regulations are Code in itself, the Regulations do not contemplate the order such as the one passed in the present case. On that ground also the Suit filed by the Appellant cannot be stated to not maintainable.

11. I am therefore of the opinion that the view taken by both the Courts that the Suit was barred by Section 47 of the Regulations is without consideration of the pleadings in the plaint. There may be cases where the voidness of the order, or fraud is only pleaded for the name sake, but in such is not the case at hand. The Appellant has also prayed for relief of possession and injunction which can only be considered by the Civil Court. In the circumstances, the question of law as framed will have to be answered in favour of the Appellant and the Suit will have to be held maintainable.

12. It is however clarified that all the observations made above are only to hold that the Suit is maintainable and that there are adequate pleadings in the plaint in that regard. However, the trial will held on its own merits. None of the observations made above will influence the learned Civil Judge in deciding the Suit on merits including the observations as regard the nature of the order passed on 25 June 1997.

13. The Second Appeal is accordingly allowed. The Judgment passed by the learned Principal District Judge, Dadra and Nagar Haveli, Silvassa in Civil Appeal No. 4 of 2013 is quashed and set aside and the one passed by the Land Reforms Officer dated 25 June 1997. The Regular Civil Suit No. 1 of 2011 stands restored to the file of Civil Judge, Junior Division, Dadra and Nagar Haveli, Silvassa. No order as to costs.

(N.M. Jamdar, J.)