

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6187 OF 2015

Shantaram S. Shelar (since Deceased)
through LRs.

...Petitioners

Versus

Mahadev Punaji Jadhav
And Ors.

...Respondents

....

Mr. Kunal Bhanage, Advocate for the Petitioners.
Mr. Johnson John, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 7th July, 2016

P.C.

1. Heard Mr. Kunal Bhanage, learned Counsel for the petitioners and Mr. Johnson John, learned Counsel for the respondents, length.

2. Rule. Mr. Johnson John waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 17.3.2015 passed

by the learned Judge, presiding over Court Room No.37 of Court of Small Causes at Bombay, Bandra Branch in Misc. Application No.306/2010 as also the judgment and order dated 17.4.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) in Misc. Appeal No.29/2015. By these orders, the Courts below dismissed the application taken out by the defendants under Order 9 Rule 13 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for setting aside the exparte decree dated 5.1.2010 passed by the learned trial Judge in R.A.E. Suit No.114/229 of 2008.

4. The matter was heard at length on the earlier occasion and was adjourned till today so as to enable Mr. Bhanage to take instructions from the defendants on following points :

- (i) as to whether the defendants are ready and willing for appointment of the Court Receiver in respect of the suit premises and handing over possession to the Court Receiver within two weeks from today.
- (ii) as to whether the defendants are agreeable for appointing the respondents as an agent of the Court Receiver.

5. Subject to the defendants agreeing to the above course of action, it was made clear that the exparte decree dated 5.1.2010 will be set aside and the suit will be restored and the defendants will be permitted to file written statement within four weeks from today.

6. Mr. Bhanage states that all the defendants are present in the Court. He has tendered photo-copies of their identity cards which are taken on record and marked "X" Colly. for identification. Upon taking instructions from them, Mr.Bhanage states that the defendants are ready and willing for appointment of the Court Receiver as also handing over possession to the Court Receiver within two weeks from today. He further states that the defendants will file written statement within four weeks from today. The defendant will take out application for disposal of the suit in a time bound manner. Mr.John has no objection for this course being adopted.

7. Hence by consent of the parties, the Petition is disposed of in following terms :

[i] Receiver, High Court, Bombay is appointed with all

the powers under Order XL of C.P.C. in respect of room No.106/F, Punjabi Rajba Jadhav Chawl, Dr. Peter Dias Road, Bandra (W), Mumbai – 400 050 (for short, 'suit premises');

[ii] The defendants agree and undertake to hand over vacant and peaceful possession of the suit premises to the Court Receiver within two weeks from today. Upon handing over the possession by the defendants to the Court Receiver, the Court Receiver will put the plaintiffs in possession of the suit premises as agent of the Court Receiver without payment of any royalty and security charges subject to their paying statutory charges as also electricity charges etc..

[iii] Upon handing over possession of the suit premises to the plaintiffs in the aforesaid terms, the impugned orders are set aside and application under Order 9 Rule 13 stands allowed. Exparte decree dated 5.1.2010 is set aside and R.A.E. Suit No.114/229 of 2008 is restored to the file of the trial

Court. Defendants shall file written statement within four weeks from today and give advance copy to the other side during that period.

[iv] Defendants are at liberty to file application for expeditious disposal of the Suit. If such application is filed, learned trial Judge will pass appropriate orders.

[v] All contentions of the parties on merits in the suit are expressly kept open.

[vi] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)