

Sequeira

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

SECOND APPEAL No. 71 of 2012

Shri Rajkumar Laxman Mandhare & ors. .. Appellants

Vs.

Shri Bhaga Ambo Nande
since deceased his heirs

1. Rohini Bhaga Nande & anr. .. Respondents

Mr.S.M.Kamble, for Appellants.

Ms.Rekha Musale i/b Ms.Varsha Palav, for Respondent Nos.1 and
2.

***CORAM: N.M. JAMDAR, J.
Wednesday, 16 March 2016.***

PC. :

The Appellant challenges the Judgment and Decree passed by the Additional District Judge, Raigad in Civil Appeal No.104 of 2004 allowing the Appeal and setting aside the order dated 28 June 2004 passed by the Civil Judge Senior Division, Panvel partly decreeing the suit directing the Respondent to pay ₹.45,000 as costs.

2. The suit was instituted by the Appellant against the Respondent for damages of ₹.1,20,000 for malicious prosecution by the Respondent in Regular Civil Suit No.89 of 1995 under Section 34, 504, 506 of the Indian Penal Code.

3. The learned counsel for the Appellant submitted that the question of law that arises is that the appellate Court did not remand the matter for fresh trial when it had come to the conclusion that the issues were not properly framed. He submitted that the further question of law arises that once the Criminal Complaint was dismissed on the findings that no case was made out the grant of damages for malicious prosecution ought to follow. He submitted that the appellate Court has not considered the various factors which necessitate grant of damages. He also submitted that merely because copy of the complaint was not produced would not lead to the conclusion that damages are not claimed.

4. As far as the arguments regarding framing of issues is concerned, the appellate Court has no doubt stated that the trial Court had not framed the correct issue but the appellate Court itself has considered the evidence on record in light of the issues. In fact the trial Court had decreed the suit in favour of the Appellant proceeding on erroneous basis, which the appellate Court has rightly noted that the suit was for damages on the basis of malicious proceedings. Thereafter the appellate Court has proceeded to consider the surrounding circumstances as well as the findings of the Criminal Court to come to a conclusion that though the Respondent failed in the prosecution, it could not be said as malicious prosecution. Merely because the complaint was dismissed, straightaway an inference could not have been drawn that the entire prosecution was malicious. The appellate Court has

noted that the Respondent a tenant of the Appellant, was the only person who had not vacated the premises. There was history of litigation between both the parties. The Appellant had also filed proceedings against the Respondent. The learned trial Court has also taken note of the fact that the Appellant and his father are accused in criminal cases.

5. Considering this factual position, appellate Court rendered a finding of fact that the prosecution cannot be termed as malicious. It is not possible to re-appreciate the evidence and come to a conclusion that the facts show that the prosecution was malicious. No question of law arises in the Second Appeal. What is sought to be assailed is assessment of the evidence by the appellate Court. Second Appeal therefore cannot be entertained and is dismissed.

(N.M.Jamdar, J.)