IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.99 OF 2013

ALONG WITH

CIVIL APPLICATION NO.301 OF 2013

Rajendra Rupsinh Dodia.] … Appellant

Versus

Union Territory of Dadra and Nagar Haveli, Silvassa and Anr.] … Respondents

Ms. Prabha Badadare for Appellant.
Mr. Shrishailya Deshmukh for Respondents.

CORAM :- R. D. DHANUKA, J.
DATE :- NOVEMBER 28, 2016

P. C. :-

1. Admit on the following substantial question of law :-

(i) Whether the impugned Judgment and Decree passed by the learned Principal District Judge, Dadra and Nagar Haveli at Silvassa on 11/07/2012 setting aside the decree passed by the learned Trial Court dated 30/11/2010 insofar as the exemption granted against the defendants not to disturb the possession of the plaintiff upon the suit land without following the procedure established by the law, is perverse ?

2. Learned Counsel for respondents waives service.

3. By consent of the parties, the Second Appeal is heard finally forthwith.

4. Some of the relevant facts for the purpose of deciding this appeal are as under :-

5. The appellant was the original plaintiff before the learned Trial Judge whereas the respondents were the original defendants. The appellant had filed a suit for declaration and permanent injunction. The suit was resisted by the defendants on various grounds. The learned Trial Judge framed issues for determination. The learned Trial Judge passed Judgment and Decree on 30/11/2010 thereby partly decreeing the suit. The learned Trial Judge declared the notices issued by Mamlatdar on 30/09/1999 and 26/10/1999 to the plaintiff for vacating the suit land as null and void. However, the learned Trial Judge passed an order of injunction restraining the defendants from disturbing the possession of the plaintiff upon the suit land till he was evicted by the procedure established by law. Having aggrieved by the said Decree and Judgment dated 30/11/2010 passed by the learned Trial Judge, the plaintiff preferred an appeal (Regular Civil Appeal No.1 of 2011).

6. The learned Principal District Judge, Dadra and Nagar Haveli at Silvassa, formulated 6 point for determination. By a

Judgment and Decree dated 11/07/2012, the learned Principal District Judge partly allowed the Regular Civil Appeal No.1 of 2011 and was pleased to modify the said Decree and Judgment passed by the learned Trial Judge. The learned Principal District Judge was pleased to set aside the decree for injunction and upheld the rest of the decree passed by the learned Trial Judge.

7. It is submitted by the learned Counsel for appellant i.e. original plaintiff that the First Appellate Court could not have reversed the said decree which was for injunction without due process of law. He submits that if the impugned Judgment and Decree passed by the First Appellate Court is not set aside, the defendants would evict the plaintiff even without following any due process of law, illegally.

8. The learned Counsel for respondents is not able to defend the Judgment and Decree passed by the First Appellate Court dated 11/07/2012.

9. In my view, since the learned Trial Judge, while passing the decree for injunction, had made it clear that the said injunction was granted restraining the defendants from disturbing the possession of the plaintiff upon the suit land till he was evicted by the procedure established by law, the learned First Appellate Court could not have set aside the said decree and should not have permitted the defendants to evict the plaintiff even without following the due process of law. In my view, the finding rendered and the conclusion

drawn by the learned First Appellate Court while reversing the decree passed by the learned Trial Court is perverse. In my view, the defendants cannot be allowed to dispossess the plaintiff without following the procedure. Insofar as the substantial question of law formulated by this Court is concerned, for the reasons recorded aforesaid, the substantial question of law is answered in the affirmative. I, therefore, pass the following order :-

ORDER

(i) The Judgment and Decree dated 11/07/2012 insofar as it relates to the decree for injunction passed by the learned Trial Judge, is hereby set aside. Second Appeal No.99 of 2013 is allowed in the aforesaid terms. Rest of the decree passed by the learned First Appellate Court on 11/07/2012 is upheld.

(ii) In view of the disposal of the Second Appeal, Civil Application No.301 of 2013 does not survive and is, therefore, disposed of. No order as to costs.

(R. D. DHANUKA, J.)