

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.729 OF 2015

Anjuman Taheezbul Akhalaq through its
Chairman & Secretary Abdul Bari Khaliqi and others ... Applicants
Vs.
Rasheed Ahmed Md. Khalil and others ... Respondents

Mr. M. M. Vashi, Senior Advocate with Mr. Makarand Kale and Ms Aparna
Devkar i/b. M. P. Vashi Associates for Applicants.
Mr. N. R. Bubna for Respondents No.1 to 5.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 28, 2016

P.C. :

Heard Mr. Vashi, learned Senior Counsel for applicants and
Mr. Bubna, learned Counsel for respondents No.1 to 5 at length.
Mr. Vashi orally applies for deleting respondents No.6 and 7 on the
ground that no relief is claimed against them. Leave as prayed for is
granted. Amendment shall be carried out forthwith. Rule. Mr. Bubna
waives service for respondents No.1 to 5. At the request and by consent
of the parties, Rule is made returnable forthwith and the Application is
taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil
Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as
defendants No.1, 3 and 5, have challenged the judgment and decree
dated 13.10.2015 passed by the learned Ad-hoc District Judge-1,
Malegaon in Regular Civil Appeal No.148 of 2014. By that order, the
learned District Judge allowed the Appeal preferred by respondents No.1
to 5, hereinafter referred to as plaintiffs and decreed Regular Civil Suit
No.217 of 2007 filed by them and directed the defendants to handover
the vacant and peaceful possession of Tahjeeb High School consisting of

three school buildings, offices, garden, playground and latrines situate on plots No.40 to 44 and 51 to 54 of Survey No.255 at Guruwar Ward, Malegaon (for short 'suit premises'). The learned District Judge also directed inquiry under Order 20, Rule 12 of C.P.C. for mesne profits.

3. Mr. Vashi submitted that plaintiffs instituted Suit on the ground that they require suit premises reasonably and bonafide and that defendants have carried out permanent construction without the consent of the plaintiffs. The learned trial Judge dismissed the Suit on 10.12.2014. He has taken me through that judgment and in particular the evidence of the plaintiffs' witnesses. After going through the evidence adduced by the plaintiffs, the learned trial Judge concluded in paragraph 57 that plaintiffs failed to prove their reasonable and bonafide requirement. The learned trial Judge also held that plaintiffs failed to adduce any concrete evidence on the point of permanent construction. Aggrieved by this decision, plaintiffs preferred Appeal. He has taken me through the judgment and in particular paragraph 13. In paragraph 13, the learned District Judge held that plaintiffs have proved their reasonable and bonafide requirement of the suit premises. He submitted that the learned District Judge has not at all considered the evidence adduced by the plaintiffs' witnesses as also the case of the defendants that plaintiffs have sufficient premises for satisfying their need. He, therefore, submitted that application requires consideration.

4. On the other hand, Mr. Bubna supported the impugned order. During the course of hearing, I suggested that as the learned District Judge has not considered the evidence, matter requires to be either admitted or remitted. The appellate Court being the last fact finding Court is bound to bring the evidence on record. In the present case, the learned District Judge has not discharged his duty while dismissing the Appeal.

5. Mr. Bubna sought time to take instructions and at his request, matter was adjourned till today. Upon taking instructions from the instructing Advocate as also respondents No.1 to 5, he submits that by consent, impugned order may be set aside and the Appeal may be restored to the file of the learned District Judge. He submitted that the appellate Court may be directed to dispose of the Appeal in a time bound manner.

6. In view thereof, by consent of the parties, I pass the following order:

a. Impugned order dated 13.10.2015 is set aside and Regular Civil Appeal No.148 of 2014 is restored to the file of the learned District Judge;

b. Parties agree that they will appear before the learned District Judge on 08.02.2016 and for that purpose, no fresh notice be issued to them;

c. The learned District Judge is requested to decide the Appeal as expeditiously as possible, and preferably within 3 months from the date of appearance of the parties;

d. All contentions of the parties on merits are expressly kept open.

e. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)