

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.70 OF 2015

Dattani Construction through Satish Dattani and others ... Applicants
Vs.

Durgabai Bhaskar Mhatre and others ... Respondents

Mr. Anuj Narula a/w. Ms Meena Bhatia i/b. Jhangiani Narula & Associates for Applicants.

Mr. S. J. Chaurasia a/w. Mr. Ashok Khargar i/b. Ashok Law Firm for Respondents No.1 to 9.

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

P.C. :

Heard Mr. Narula, learned Counsel for applicants and Mr. Chaurasia, learned Counsel for respondents No.1 to 9.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and order dated 09.07.2014 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai on preliminary issues framed in L.C.Suit No.1084 of 2004. By that order, the learned trial Judge held that the City Civil Court has pecuniary jurisdiction to entertain and try the Suit and that plaintiffs' Suit is not barred by Law of Limitation.

3. Mr. Narula has invited my attention to the -

- (a) preliminary issues framed by the learned trial Judge on 24.08.2004;
- (b) order dated 30.08.2005 passed by this Court in C.R.A.No.19 of 2005;
- (c) issues framed by the learned trial Judge on 09.03.2006;
- (d) preliminary issues framed on 09.08.2006 which are same as

that of preliminary issues framed on 24.08.2004; and
(e) issues recast on 20.12.2010.

4. In particular, Mr. Narula invited my attention to issue No.4, which is one of the issues recast on 20.12.2010. Issue No.4 reads thus,

“4. Whether suit is maintainable due to embargo created by Sect.42 of Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act 1971?”

5. Mr. Narula submitted that the learned trial Judge has framed the issue viz. whether suit is maintainable due to embargo created by Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Act'). He submitted that the learned trial Judge may be directed to decide this issue as a preliminary issue.

6. By the impugned order, the learned trial Judge held that the Suit is not barred by limitation as also City Civil Court has pecuniary jurisdiction to entertain and try the Suit. In paragraph 9, the learned trial Judge also dealt with the arguments advanced on behalf of defendants No.1 to 4 based on Section 34 of the Specific Relief Act, 1963 and observed that as the Court was dealing only with the preliminary issues, it is not dealing with the contention at this stage and the issue as regards maintainability of the Suit can be decided on the basis of issues framed in that behalf.

7. The matter was heard at length on 24.11.2016 and it was also indicated that this Court is not inclined to interfere with the impugned order. It was adjourned till today so as to enable the learned Counsel appearing for the parties to take instructions as to whether framing of issue No.4, extracted hereinabove, to be tried as a preliminary issue, should be left to the trial Court. Upon taking instructions, learned

Counsel for the parties submit that the learned trial Judge may be directed to consider whether issue No.4 can be treated as preliminary issue or not.

8. Order XIV, Rule 2(2) of C.P.C. reads thus,

“2. Court to pronounce judgment on all issues.-

(1) ...

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

9. In view thereof, by consent of the parties, C.R.A. is disposed of by directing the learned trial Judge to consider whether issue No.4, extracted hereinabove, should be treated as preliminary issue or not. If the learned trial Judge finds it appropriate to treat issue No.4 as a preliminary issue, the learned trial Judge will proceed to decide the issue in accordance with law. If however, the learned trial Judge thinks it appropriate to decide the said issue along with the other issues already framed, he may pass order to that effect. Subject to this, Application fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

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