

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.215 OF 2014

Nagpur Improvement Trust, Thr. its Chairman, Near Liberty Cinema, Nagpur.

-vs-

Krishnakumar s/o Rambishal Shukla, R/o Mankapur, Koradi Road, Nagpur.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. O. Chhabra, Advocate for appellant.
Shri R. Mehta, Advocate h/f Shri O. R.
Adalatwale, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : May 03, 2016

The original defendant has filed the present appeal being aggrieved by the decree passed by the Appellate Court restraining the appellant from dispossessing the respondent from the suit plot without following the due procedure of law.

It is the case of the respondent that he was the owner and possessor of the suit plot admeasuring 40' x 20' situated at Mankapur, Nagpur. According to the plaintiff the employees of the defendant Trust were intending to demolish the house which was standing on the suit property and hence suit for declaration that the plaintiff was the owner of the plot in question along with

prayer for permanent injunction came to be filed. In the written statement filed by the defendant a plea was taken that the land in question had been acquired pursuant to the award passed on 17/02/1995 and that the title vested in the defendant.

The trial Court dismissed the suit holding that the plaintiff had not issued a statutory notice under Section 115 of the Nagpur Improvement Trust Act 1936. The appeal filed by the original plaintiff was partly allowed. It was held that though the plaintiff did not have ownership over the suit plot, he could not be dispossessed without following due procedure of law.

Shri R. O. Chhabra, the learned counsel for the appellant submitted that as the Appellate Court has found that the plaintiff had no title to the suit property, his continuation thereon was without any authority of law. He submitted that in such situation the Appellate Court was not justified in restraining the appellant from dispossessing the respondent.

Shri R. Mehta, the learned counsel holding for Shri O. R. Adalatwale, the learned counsel for the respondent supported the impugned judgment.

Having perused the impugned judgment, it is clear that the finding that the plaintiff had no title over the suit property stands in favour of the appellant. There is no challenge to the aforesaid finding. The injunction which has been granted only restrains the appellant from dispossessing the respondent without following the due procedure of law. It therefore cannot be said that the said injunction as granted would operate in perpetuity. It is always open for the appellant to follow the due procedure of law if it intends to remove the respondent from the suit property. Hence the second appeal does not give rise to any substantial question of law. The same is dismissed with no order as to costs.

JUDGE