

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.23 of 2016
[Smt. Mira Ramrao Tarare & others Vs. Chandrakant Gulabrao Morey]

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

Court's or Judge's orders

Mr. A. S. Dhore, Adv., for the appellants.
Mr. A.V. Bhide, Adv., for respondent.

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CORAM : A.B. CHAUDHARI, J.

DATE : 16th February, 2016

Learned counsel for the appellants vehemently contended that the appellants approached this Court via Writ Petition No. 2904 of 2014, since the Lower Appellate Court had not considered the two applications – Exh.30 for a permission to produce documents by way of additional evidence, and Exh. 31 for a permission to amend the Written Statement, and in accordance with the law laid down by the Supreme Court in its decision in the case of **Union of India Vs. Ibrahim Uddin** [(2012) 8 SCC 148] , this Court directed the Lower Appellate Court to consider those applications or documents at the time of final hearing of the appeal. Pointing out the judgment and reasons recorded by the Lower Appellate Court, he submits that the Lower Appellate Court has not dealt with the said aspect in the matter despite the

aforesaid Judgment of this Court in Writ Petition No. 2904 of 2014 and, therefore, Substantial Questions of Law arise. He has also shown me the document of Agreement dated 23rd September, 1988 which is an unregistered document on a stamp paper of Rs. 20/- indicating delivery of possession and the same being already with the proposed purchaser. He, therefore, contended that the Lower Appellate Court committed an error in law in not dealing with the applications [Exhs. 30 and 31] in accordance with law and, therefore, this requires remand to the Lower Appellate Court.

Per contra, learned Adv. Mr. Bhide for the respondent submitted that the case of the appellants was that they were the tenants of one Kosarkar, i.e., the predecessor-in-title of the respondent and the tenancy proceedings, which were contested upto this Court, culminated in favour of the landlord, Mr. Kosarkar. In other words, the appellants claiming to be the tenants lost the issue of tenancy. Referring to the document of Agreement under application [Exh.30], Mr. Bhide contended that the said document is not a registered document, though it shows delivery of possession, to which Mr. Dhore countered by saying that the document is obviously prior to the amendment which made an addition to the Explanation to Section 25 of the Bombay Stamp Act, and consequently, would be admissible in evidence.

Mr. Bhide then contended that at any rate it is

not the case of the appellants that pursuant to the said Agreement dated 23rd September, 1988, any suit for specific performance of contract was filed against Mr. Kosarkar and, therefore, there is no point in entertaining the Second Appeal.

I have heard the learned counsel for the rival parties. I have perused the Judgment and Order dated 31st March, 2015 passed by this Court in Writ Petition No. 2904 of 2014.

It is true that this Court directed the Lower Appellate Court to consider Exhs.30 and 31 in the light of the decision of the Apex Court in the case of Union of India Vs. Ibrahim Uddin [cited supra]. The decision in the case of Ibrahim Uddin lays down various parameters for considering the production of additional evidence at the appellate stage. Even if I find from reading of the Judgment of the Lower Appellate Court that there are no proper reasons given by the Lower Appellate Court for deciding Exh.30, I find, no purpose would have been served by admitting the Agreement of Sale dated 23rd September, 1988. The reason is that the case of the appellants is that the appellants are tenants of Mr. Kosarkar and it is in that capacity, the appellants have been in possession. But then, admittedly, the appellants lost the issue of tenancy upto this Court and, therefore, the appellants cannot claim protection of tenancy.

Harking back to the Agreement of Sale dated

23rd September, 1988, I find from perusal thereof that the document is couched in the language of an Agreement of Sale in respect of the same property, in respect of which tenancy was sought to be claimed earlier. In other words, an independent Agreement of Sale dated 23rd September, 1988 between the landlord and the tenants is being sought to be relied upon. But then, it is not the case of the appellants that on the basis of the said Agreement dated 23rd September, 1988, the appellants had instituted any suit for specific performance of Agreement against the original landlord, Mr. Kosarkar, who, as a matter of fact, had sold the property to the respondent and, therefore, there is no subsisting right for the appellants thereafter to claim any specific performance of contract against Mr. Kosarkar. It is, thus, seen that even if the said document of Agreement is taken on record or read in the evidence, the same loses all its relevance and significance for these reasons. It is a trite law that the additional evidence must be such which would necessitate the process of adjudication and not merely a paper reflecting no light for adjudication by the Lower Appellate Court. I, therefore, find that admitting the said document on record was of no use and, therefore, Exhs. 30 and 31 could not have been allowed. It may be true that the Lower Appellate Court has not by a specific order rejected those applications. But then for the reasons aforesaid, I hold that those applications were liable to be rejected.

In the result, no Substantial Question of Law is involved and hence I make the following order:-

ORDER

Second Appeal No. 23 of 2016 is summarily **rejected.**

Judge