

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9672 OF 2017
(Vijay Sitaram Paturkar Vs. Municipal Corporation)

Mr.P.N.Sonpethkar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 07/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 19/06/2017 by which the Trial Court has framed the following issue at the stage of advancing of final arguments :-

"Does the plaintiff proves that the suit property is in good condition ?"

2. Mr.Sonpethkar, learned Advocate for the petitioner has strenuously canvassed the following points :-

[a] Recording of evidence has already been completed pursuant to the framing of the issues.

[b] The petitioner has assailed the order of sealing of the residential property and eviction at the behest of the Municipal Corporation which has taken up a ground that the suit property is old, in a dilapidated condition and is dangerous for occupation.

[c] The Municipal Corporation is acting under the influence of the brothers of the petitioner who desire to deprive her of her right in the property.

[d] A separate suit is pending between the petitioner and her

brothers with regard to partition and separate possession of the same suit property.

[e] By the framing of the additional issue, the burden is cast on the plaintiff to establish that the suit property is in a good condition.

[f] Hardships would be caused to the petitioner who is presently residing alongwith her mother in a separate residential premises.

3. Reliance is placed upon the judgment in the matter of Mer Nagajam Aala and others Vs. Punja Kana and others [AIR 1981 Gujarat 141].

4. After considering the strenuous submissions of the learned Advocates, I find that the impugned order can neither be termed as being perverse or erroneous nor it would cause gross injustice to the petitioner.

5. The petitioner has preferred the suit alleging that the stand taken by the Corporation that the suit property is in a dilapidated condition and is dangerous for occupation, is a false and unsustainable ground as the Corporation is acting under the influence of her brothers.

6. One who alleges has to prove is the law. *Semper necessitas probandi incumbit ei qui agit*, which means that the necessity of proof always lies with the person who alleges. The onus and burden would lie on the petitioner while contending that the suit property is in a good condition and is not dangerous for residential purposes. After leading oral evidence, if the burden is discharged, it would then shift to the Corporation to disprove the stand of the petitioner. Consequentially, the Corporation would then have to establish that the property is dangerous for occupation.

7. The view taken by the Gujarat High Court in the Mer Nagajam case (supra) is with regard to a suit filed for restraining the defendants from burdening the property of the plaintiffs with the passage to the defendants' fields. I do not find that the said view would be of any assistance in this case to the petitioner as it is the claim of the petitioner / plaintiff that the property is safe for occupation.

8. As such, this petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)