

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1308 OF 1998
WITH
CIVIL APPLICATION NO. 27 OF 2001
WITH
CIVIL APPLICATION NO. 1374 OF 2014

Ramu D. Wakse .. Appellant
(deceased through
Daji R. Wakse)

vs.

Tukaram V. Devlekar and ors. .. Respondents

Mr. Vishwajeet Kapse a/w. Mr. K.J. Rane for the Appellant.

CORAM : M. S. SONAK, J.

DATE : 10 FEBRUARY 2017.

P.C. :-

1] Heard Mr. Vishwajeet Kapse, learned counsel for the appellant.
The respondents neither present nor represented.

3] The challenge in this appeal is to the judgment and order dated 20 November 1998 made by the City Civil Court at Mumbai in Suit No. 7685 of 1987.

4] The suit was instituted by Tukaram V. Devlekar (respondent No.1 herein) against Ramu D. Wakse and the Maharashtra Housing and Area Development Board (MHADA) seeking for recovery of possession of the suit structure (hut) and mesne profits.

5] Ramu D. Wakse has expired and the appeal is now being pursued by his legal representative Daji R. Wakse. The other legal

representatives were impleaded as the respondents to this appeal. However, the appeal stands dismissed as against such other respondents. Such dismissal, will not affect maintainability of this appeal as against Tukaram V. Devlekar, who is really the contesting respondent No.1 in this appeal.

6] In the suit, Ramu D. Wakse (original defendant No.1) had raised an objection to the maintainability of by urging that the suit structure (hut) is located in a slum area and therefore, Tukaram V. Devlekar (plaintiff) was not entitled to institute the suit without previous permission in writing from the competent authority as contemplated under section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment), Act, 1971 (Slum Act).

7] The issue was framed by learned trial Judge in the context of such objection.

“Issue No.1:

On this issue, the Defendant No. 1's witness simply stated on oath that according to his information the area in which the suit was situated was declared as slum under the provisions of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971. His statement is not supported by any document such as Notification Gazette, etc. S.4 of the Act gives discretion to the State Government to declare any area in the State as slum under the said Act and such declaration is required to be published in the official gazette. Unless the gazette is shown to the court, it cannot be said that the area in which the suit hut is situated was declared as Slum. In view of this, the suit cannot be said to be bad for want of sanction from the Competent Authority under the said Act.”

8] After this appeal was admitted in the year 1999, the appellant took out Civil Application No. 27 of 2001 invoking the provisions under Order XLI Rule 21 of the Code of Civil Procedure, 1908 (CPC) seeking leave to produce on record certified copy of the Government Gazette dated 10 June 1976 as and by way of additional evidence, since, according to learned counsel for the appellant, such Gazette very clearly establishes that the suit structure (hut) is indeed located in a slum area. Such application was ordered to be taken up alongwith final hearing of the appeal.

9] Mr. Kapse, learned counsel for the appellant, submits that it has come in evidence that the suit structure (hut) falls under CTS No. 229 and 267 at Nehru Nagar, Kurla. He submits that the same is recorded in the Government Gazette dated 10 June 1976, this area has been declared as slum area under the provisions of the Slum Act. In these circumstances, he submits that the provisions of section 22 of the Slum Act clearly apply and the original plaintiff had no legal authority to institute the suit, without obtaining previous permission in writing of the competent authority. He submits that the additional evidence may be considered and on this basis, the impugned judgment and decree be set aside.

10] Mr. Kapse also invited my attention to the order dated 27 March 2012 in Civil Application No. 3518 of 2011 in this first appeal, in which, it is recorded that a slum redevelopment scheme has commenced, *inter alia*, in respect of the suit structure (hut) and in terms of the interim orders made, it is the appellant, who has handed over the possession of the suit structure to the developer for

the purposes of slum redevelopment scheme. Mr. Kapse submits that from this it is quite evident that the suit structure fell within the slum area and compliance with the provisions of section 22 of the Slum Act was necessary before the suit could have been instituted.

11] At least *prima facie*, the case of the appellant deserves to be accepted. On the sole ground that no Government Gazette was produced, it was not very proper to have rejected the appellant's objections based upon section 22 of Slum Act. There was other material produced on record by original defendant NO.1. Some examination was necessary as to whether such material had made out a case that the suit structure was indeed a slum area. Be that as it may, cognizance will have to be taken of the Gazette dated 10 June 1976, at least for *prima facie* purposes, since, the issue as to whether the suit structure stands covered by the said Gazette or not is one issue has to be reexamined by the trial court on the basis of the evidence on record or if necessary by permitting the parties to lead further/additional evidence on this issue.

12] The order dated 27 March 2012 in Civil Application No. 3518 of 2011, is also required to be taken into consideration, but again, only for *prima facie* purposes.

13] Section 22 of the Slum Act *inter alia*, provides that notwithstanding anything contained, no person shall except with the previous permission in writing of the competent authority, institute, after the commencement of the Slum Act, 1971, any suit or proceedings for obtaining any decree or order for the eviction of any

occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation or for both. Thus, if the suit structure, by virtue of Government Gazette dated 10 June 1976 is indeed found to be in the slum area, then the impact of section 22(1)(a) of the Slum Act, the maintainability of the suit will have to be considered in greater details. For this purpose, a remand will be necessary.

14] Original defendant No.1 and the appellant, who is now his legal representatives are, however, to blame for non-production of Gazette before learned trial Judge in the course of their evidence. On the basis of such lapse on their part, they have virtually succeeded in delaying the proceedings for this length of time. Remand, which is bound to entail further delay, cannot be simply ordered unless, some suitable conditions are imposed upon the appellant.

15] After the impugned decree was made, learned trial Judge has determined the amount of meagre profits/compensation at the rate of Rs.250/- per month. By interim order dated 9 October 2000, this court, in Civil Application No. 5714 of 200 had directed the appellant to pay a sum of Rs.250/- per month from August 2000 till disposal of this appeal. Mr. Kapse states that such amount has been paid to respondent No.1 and only the amount for the present month is yet to be paid, but will be paid.

16] The appellant, who is present in the court, makes a statement that even if the suit is ultimately dismissed in pursuance of the

remand, the appellant will not seek any recovery or restitution in respect of the amount already paid in pursuance of the interim order dated 9 October 2000. This statement is accepted.

17] In addition to the aforesaid, the appellant is directed to pay to respondent No.1 a sum of Rs.10,000/- by way of costs to respondent No.1 within a period of four weeks from today.

18] The impugned judgment and decree is set aside. The matter is remanded to learned trial Judge, who shall admit the Government Gazette dated 10 June 1976 in evidence and thereafter decide the objection based on section 22 of the Slum Act in accordance with law and on its own merits. In case, the parties desire to lead additional evidence, learned trial Judge may consider granting them leave to do so. Such evidence shall, however, be restricted to the issue of objection under section 22 of the Slum Act only.

19] The interim order dated 27 March 2012 made by this court in Civil Application No. 3518 of 2011 shall operate during pendency of the suit before learned trial Judge. Accordingly, learned trial Judge shall be at liberty to make appropriate orders in that regard at the stage of final disposal of the suit. The observations made by this court in this court are only *prima facie* and therefore, it is for learned trial Judge to examine the matter and determine whether the suit structure (hut) indeed falls within slum area and on the said basis, decide the objections based on section 22 of the Slum Act All contentions of all parties in this regard are therefore, kept open for decision of learned trial Judge.

20] Parties to appear before learned trial Judge on 20 March 2017 at 11.00 a.m.. Before that, the appellant shall ensure that amount of costs are either paid or deposited before the trial Judge.

21] In view of disposal of the appeal, the other civil applications do not survive and the same are also disposed of. However, it is made clear that the other civil applications are not disposed of on merits.

(M. S. SONAK, J.)

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