

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.380 OF 2014
WITH
CIVIL APPLICATION NO.889 OF 2014**

Shri Ramesh Jipru Jadhav @ Jamdhare
since deceased through his Legal heirs
and representatives

1] Mrs. Kalpana Ramesh Jamdhare

And Others

... Appellants

Versus

Shri Gopal Ambo Pitambare

And Another

... Respondents

.....

Mr. Amol Mhatre for the Appellants.

Mr. R.S. Apte, Senior Advocate i/b Mr. Girish Paryani for Respondent No.1
and 2.

.....

CORAM : S.C. GUPTE, J.

DATE : 23 FEBRUARY 2017

PC. :

. This second appeal challenges a judgment and order passed by the District Court at Bhiwandi in Regular Civil Appeal No.149 of 2012. By the impugned judgment and order, the learned District Judge dismissed the appeal and confirmed the judgment and decree passed by the Civil Judge, Junior Division, Bhiwandi in Regular Civil Suit No.912 of 2013 filed by the Respondents.

2 The subject matter of controversy in the present appeal concerns a shed admeasuring 20 x 20 ft. constructed on the suit land by the original Appellant (Defendant to the suit), now represented by his legal representatives. The Respondents (original Plaintiffs) claimed to be owners of the suit property and objected to the shed erected by the Defendant on the suit land as an encroachment. The facts that the Plaintiffs were owners of the suit land as of the date of the suit and the Defendant had encroached upon the suit land by constructing a shed, are not in serious dispute in the present second appeal. What is, however, contended by learned Counsel for the Appellant is that during the pendency of the suit, the suit land, admeasuring about 2800 sq. meters, was acquired by the Highway Authority under the Land Acquisition Act; and that by the time the suit was decreed there was already an award passed in respect of the suit land and its possession was taken over by the State. Learned Counsel refers to the evidence led before the Trial Court, including the Plaintiffs' own deposition and the deposition of a Clerk from the Office of the Special Land Acquisition Officer, Thane, and submits that this evidence conclusively establishes that the suit land together with the disputed shed was acquired by the State and vested in the State and no decree could be passed in favour of the Plaintiffs after such vesting.

3 Both the Trial Court and the First Appellate Court have come to a concurrent finding of the fact that the identity of the land acquired and taken possession of by the State is not established in the trial. This concurrent finding of fact, unless the same is perverse, is not amenable to challenge in a second appeal on a substantial question of law. But besides that point, what is also important is that the ownership of the suit land

before its acquisition by the State and the right of the original owner to recover its possession from a trespasser are material elements, which anyway need to be decided, even if there is an acquisition of the property during the pendency of the suit. The question as to the party who is entitled to receive compensation for the acquisition of the property is still a debatable question and it arises purely between the owner and the encroacher. The State is not concerned with that question. The State, in any event, is not a party to the present suit. Even if it is assumed that the State has acquired the suit property, the right as between the parties to the property needs to be decided independently of the claim of the State, since the claim for compensation in respect of the acquired property depends on the same. It is not in serious dispute that the property was owned by the Plaintiffs and that the Defendant was a trespasser in respect of the same, having no right to it. In the premises, the impugned orders of the Courts below, cannot said to be suffering from any substantial question of law.

4 Learned Counsel for the Appellant refers to the judgment of the Supreme Court in the case of **Sita Ram Bhandar Society Vs. Lieutenant Governor, Government of NCT, Delhi**¹, which deals with the question of vesting of the acquired property under Section 16 of the Land Acquisition Act. In the view which I have taken in the preceding paragraph, this judgment has no impact for the sake of the present Second Appeal. Even the judgment of **Shanti Sports Club Vs. Union of India**² referred to by learned Counsel has no application to the facts of the present case. The judgment deals with the power of the landowner to transfer the land after its acquisition under the Land Acquisition Act. In the present case,

1 (2009) 10 Supreme Court Cases 501

2 (2009) 15 Supreme Court Cases 705

admittedly, the land was acquired by the Plaintiffs before its acquisition.

5 Accordingly, there is no merit in the second appeal and the same is dismissed. No order as to costs.

6 In view of the dismissal of the second appeal, the civil application does not survive, and the same is also disposed of.

7 Learned Counsel for the Appellant prays for continuation of the ad-interim relief operating in his favour. Two Courts below have concurred in decreeing the Respondents' suit and the second appeal herein is dismissed by this Court in *limine*. In the premises, there is no question of continuing the ad-interim relief. The application is rejected.

(S.C. GUPTE, J.)