

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.209/2013

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Divya Parab i/b. R. N. Gite for the Applicant
Mrs. D. S. Mondkar with S. B. Shetye for the Respondent No.1.

Mr. R. M. Pethe for respondent No.2.

CORAM : K. K. TATED, J.

DATE : MARCH 1, 2017

P.C.:

1. Heard. By this revision application, the defendant No.2 challenges the order dated 01.03.2012 passed by the 7th Jt. Civil Judge, Senior Division, Pune below Exhibit- 1 dismissing the application made by defendant No.2 u/s.42 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971.

2. Few facts of the matter are as under:

The plaintiff had filed S.C.Suit No.502/2010 in the court of Civil Judge, Junior Division at Pune for declaration and injunction against her son defendant No.2 in respect of the structure being No.C/2/21 at Chavan Nagar, Dhankawadi, Pune on

apprehension that her son, in collusion with Slum Authority, may transfer the suit property in his name. In that suit the defendant No.2 filed the application Exhibit- 30 for dismissal of the suit on the ground of jurisdiction of civil court in view of section 42 of the said Act. The Trial Court, considering the judgment of this court, in the matter of ***Quari Mohammed Zakir Hussain & Ors. Vs. Municipal Corporation 2002(2) BCR 98*** and of the Apex Court in the matter of ***State of Kerla Vs. N. Ramswami Iyeer AIR 1966 SC 1738*** held that the Civil Court has jurisdiction to entertain the suit as it was filed by the plaintiff, mother of defendant No.2.

3. Being aggrieved by the said order the defendant No.2 filed the Civil Revision Application.

4. It is to be noted that the plaintiff filed the suit for following reliefs:

“(A) It may kindly be declared that the intended transfer of suit property by defendant No.1 in the name of defendant No.2 is illegal, null and void, and the defendant No.2 has no legal right to get the property transferred in his name for various illegalities committed by him as mentioned in the memo of the suit.

(B) It may kindly be declared that the approval granted/to be granted by the defendant No.1 and the procedure for

execution of the said approval, in collusion with defendant No.2, is illegal, null and void.

(C) The defendant No.1 may kindly be permanently and mandatorily restrained from granting approval to the said illegal transfer in the name of defendant No.2 and/or restrain defendant No.1 from executing the approval for transfer of the suit property in the name of defendant No.2.

(D) Interim relief in terms of prayer (c) above may kindly be granted.

(E) the record and proceedings of the said illegal approval and procedure adopted for the same may kindly be called from the concerned Department of defendant No.1.

(F) Issuance of notice under section 487 of the B.P.M.C. Act may kindly be waived for the reasons mentioned in the foregoing paragraphs.

(G) Any other just and equitable order may kindly be passed in the interest of justice.”

5. Perusal of provisions of the said Act referred to hereinabove would reveal that by no stretch of imagination a dispute of a nature which is sought to be raised in the plaint can be gone into by the competent authority. In any case, the issue as to rights flowing to the plaintiff and defendants being mother and son could be within the exclusive jurisdiction of the civil court and not another forum. In this regard, it will be relevant to refer to

para Nos.12, 13 and 14 of the Apex Court judgment in the case of ***Rajasthan State Road Transport Corporation and Ors. Vs. Bal Mukund Bairwa 2009 (4) SCC 299***, which read thus:

“12. Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim Ubi jus Ibi remedium. A litigant, thus, having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless bared by statute, either expressly or by necessary implication.

13. The civil court, furthermore, being a court of plenary jurisdiction has the jurisdiction to determine its jurisdiction upon considering the averments made in the plaint but that would not mean that the plaintiff can circumvent the provisions of law in order to invest jurisdiction on the civil court although it otherwise may not possess. For the said purpose, the court in given cases would be entitled to decide the question of its own jurisdiction upon arriving at a finding in regard to the existence of the jurisdictional fact.

14. It is also well settled that there is a presumption that a civil court will have jurisdiction and the ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or Tribunal acts without jurisdiction.”

6. It can thus be clearly seen that the Apex Court, in clear terms held that a litigant having grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly borrowed by a Statute. It has been further held that there is a presumption that a civil court will have jurisdiction and the outster of civil court jurisdiction is not to be readily inferred. It has been further held that a person taking a plea contrary, must establish the same.

7. The suit was only for injunction and declaration and not for possession. Apart from that the dispute is between the mother and a son and considering the authorities relied on by the Trial Court at the time of passing the impugned order dated 01.03.2012, I do not find any reason to entertain the Civil Revision Application. Hence, same stands rejected.

8. In view of the above, hearing of the S.C.Suit No.502/2010 is expedited.

JUDGE