

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 107 OF 1997
AND
CIVIL APPLICATION NO. 5894 OF 2008

Harishchandra T. Pujare

.. Appellant

vs.

Sahadeo M. Ambhavane

.. Respondent

Mr. Altaf Khan for the Appellant.

Mr. A.S. Khandeparkar for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 23 JANUARY 2017.

P.C. :-

1] Mr. Altaf Khan, learned counsel for the appellant (original plaintiff), submits that Special Civil Suit No. 865 of 1982, in which, the impugned judgment and decree has been made, was instituted to seek a permanent injunction and restraining the respondent (original defendant) from entering into or remaining or being in suit premises or from obstructing or interfering the use of the suit premises. He submits that presently the suit premises have already been demolished and a redevelopment project is proposed at the site.

2] Mr. Altaf Khan seeks leave to place on record an additional affidavit, in which, all such subsequent developments have been set out. He submits that in view of such subsequent developments, no useful purpose will be served in continuing with the present appeal. He further submits that this court should clarify that all rights and contentions of all parties are kept open for agitation by them before

the appropriate authorities, who are concerned with the redevelopment at the site.

3] Mr. A.S. Khandeparkar, learned counsel for the respondent, submits that there is no necessity to take on record the additional affidavit, as otherwise, the respondent may have to file some counter. However, he submits that even the respondent will have no objection to disposal of this first appeal by keeping open all contentions of all parties to be raised before the appropriate authorities.

4] The additional affidavit on behalf of the appellant is taken on record. However, this does not mean that any of the averments of the contentions therein have been accepted by this court. As such, there is really no necessity for the respondent to file any counter. It is made clear that this court has merely accepted the additional affidavit, but has not examined the same and therefore, there arises no question of either acceptance or rejection of anything stated therein. In fact, there is no necessity to delve into what is set out in the additional affidavit.

5] Since, it is the case of the appellant that the suit premises stand demolished, the suggestion of learned counsel for the appellant, which is not opposed by learned counsel for the respondent, is accepted.

6] Accordingly, this appeal is disposed of by making it clear that all the rights and contentions of all parties are kept open to be

adjudicated before the appropriate authorities, in the matter of proposed redevelopment at the site.

7] The order appointing Court Receiver is also discharged. The payments which may have been made by the parties towards the appointment of the Court Receiver shall be appropriated accordingly. If, there are any further charges, the Court Receiver is at liberty to recover the same by taking out appropriate proceedings. However, from today onwards, the liability to pay the fixed amount shall cease.

8] The appeal is disposed of in the aforesaid terms.

9] In view of disposal of the first appeal, Civil Application No. 5894 of 2008 does not survive and the same is disposed of accordingly.

(M. S. SONAK, J.)

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