

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.211/2017

Ram s/o Keshavrao Rawale & Ors. ..vs.. Arya Pratinidhi Sabha (MP)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. J. B. Kasat, Advocate for appellants.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 4, 2017

Heard Mr. J. B. Kasat, learned counsel for the appellants.

By the present second appeal, the appellant is challenging the judgment and decree of the learned lower appellate Court dated 02.12.2016 in Regular Civil Appeal No. 142/2015 by which the appellate Court dismissed the appeal and thereby confirmed the order passed by the learned 3rd Jt. Civil Judge Junior Division, Achalpur, rejecting the application Exh.-41 filed by the present appellant in Regular Darkhast No.126/1995.

The suit was filed by the present respondent for possession against Keshavrao, father of the present appellants. The said suit was registered as Regular Civil Suit No.15/1980. The said suit was decreed by the learned 5th Jt. Civil Judge Junior Division, Achalpur on 20.04.1987. During the pendency of the said suit, the original defendant-Keshavrao expired and therefore the present appellants and their mother Dwarkabai were taken on record.

An appeal was carried by the present appellants. The said appeal was registered as Regular Civil Appeal No.263/1991. The learned Additional District Judge on 05.10.1995 dismissed the appeal and thereby confirmed the decree of possession granted in favour of the present respondents.

Being dissatisfied with the said, an appeal was carried before this Court and the said was registered as Second Appeal No.411/1995. In the year 2009, the said second appeal was dismissed in default. At the bar, Mr.Kasat, learned counsel for the appellants, makes a statement that the application for restoration of the said second appeal was also dismissed by this Court. Resultantly, the decree of possession granted in favour of the respondent on 22.04.1987 has attained finality.

The respondent was required to file execution proceedings to enjoy the fruits of the decree. The said execution proceedings were registered as Regular Darkhast No.126/1995. It appears that though the decree is passed in the year 1987 and the execution proceeding are filed in the year 1995 till today, the decree is remained to be executed since it appears that all the attempts are made on behalf of the judgment debtor to protract and prolong the execution by raising various objections.

The present appellants in the capacity of the judgment debtors filed an objection under Section 47 of the Code of Civil Procedure. However, the said was dismissed by the learned executing court.

Be that as it may. There is further attempt on the part of the present appellants to prolong the execution proceedings by filing an application Exh.-41. The said application is filed under Order 21 rule 97, 98, 100, 101 and 105 of the Code of Civil Procedure. By preferring the said application, it is the contention on the part of the present appellants that on 21.05.2004, the executive committee of the respondents entered into the agreement with the present applicants and by that the said executive committee agreed to transfer the area admeasuring 2000 Sq. Ft. from and out of the subject matter of the original suit i.e. 42934 Sq. Ft. According to the application Exh.-41 therefore the applicants have their independent rights to get the said agreement enforced in their favour independently though their objection under Section 47 as a judgment debtor was already rejected by the learned executing court.

The learned executing Court rejected Exh.-41 vide order dated 11.08.2015. Since the application Exh.-41 was under Order 21 Rule 100 which was having a force of decree therefore Regular Civil Appeal was filed by the present applicants i.e. Regular Civil Appeal No.142/2015. The learned appellate Court namely; Ad hoc Additional District Judge, Achalpur vide judgment and decree dated 02.12.2016 dismissed the appeal giving rise to the present second appeal.

Mr. Kasat, the learned counsel for the appellant submitted that the agreement dated 21.05.2004 has given an independent right in favour of the present appellants though

they were judgment debtors in the original civil suit. It is submitted that since the respondent was not honouring the said agreement, they were required to move an application Exh.-41 since the agreement pertains land in respect of the land for which decree is granted in favour of the respondent.

Though at the first blush, the submission appears to be attractive, on the closer scrutiny of the available record, the submission is required to be rejected.

The decree of possession was passed on 22.04.1987. When the said decree was passed, the present appellants were the defendants before the trial Court. Not only that they, as defendants, they questioned the correctness or otherwise of the said decree of possession by filing the appeal which was also dismissed and ultimately it was carried before this Court by filing Second Appeal No. 411/1995 which also dismissed for want of prosecution in the year 2009. An attempt to restore the said second appeal was also not successful since it is the submission of the learned counsel for the appellants that this Court has rejected the application for restoration.

The decree holder was required to put the said decree for execution since the appellants failed to hand over the vacant possession of 42,935 Sq. Ft. plot for which the decree was granted. An objection under Section 47 was filed by the present appellant. The said was also dismissed by the learned executing Court and it appears from the statement on the part of Mr. Kasat, learned counsel for the appellants that the said has also attained finality.

In the year 2015 then fresh attempt is made on behalf of the appellants to stall further progress of the execution proceedings by moving an application Exh.41, under Order XXI Rule 97 and 100. For the first time in the year 2015 a plea is sought to be raised in the application that the executive committee of the respondent trust in the year 2015 entered into an agreement with the present appellants and thereby they agreed to hand over the portion of 2000 Sq.Ft. from and out of the total 42,935 Sq.Ft. Admittedly, the respondent is a trust. The permission is required from the Charity Commissioner to hand over the possession of the trust property. The learned counsel for the appellant could not point out any such permission from the Charity Commissioner. He submitted that an application to adduce the evidence was moved during the pendency of Exh.-41 before the executing court however the said application was rejected. From the impugned orders, it is established and for that even there is no contrary submission on behalf of the learned counsel for the appellants that the executive committee which has entered into the agreement with the appellant, their change report was rejected by the trust authority. Thus it is clear that even though there is an agreement in favour of the appellants, it was not executed or it was not entered into in their favour by the authorised body of the respondent trust. This aspect of the matter was considered by the courts below. Except the agreement dated 21.05.2004, no other point is raised. The said is a pure

question of fact. Further, both the courts below have concurrently found that the managing committee had entered into the agreement but it was not an authorised body to enter into the said agreement. No substantial question of law is involved in the present matter.

In that view of the matter, the appeal is dismissed. No order as to costs.

JUDGE

kahale