

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.1458 of 2012

JUDGMENT:

The present Second Appeal is preferred by the plaintiff in O.S.No.5114 of 2005 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad, who is also the appellant in A.S.No.37 of 2008 on the file of the Chief Judge, City Civil Court, Hyderabad, having become unsuccessful in obtaining perpetual injunction restraining the respondent, the Commissioner of Greater Hyderabad Municipal Corporation, Circle No.VI, from interfering with her possession and enjoyment over the subject property of the suit.

Heard Sri C.Narender, learned counsel for the appellant. No representation for the respondent – Greater Hyderabad Municipal Corporation.

The short question involved in the present Second Appeal is whether both the Courts below were right in dismissing the suit as well as the appeal by judgments dated 29.10.2007 and 09.04.2008, respectively, for want of issue of notice under Section 685 of the Hyderabad Municipal Corporation Act (for short, 'the H.M.C Act'). The Courts below, in fact, tendered a positive finding that the plaintiff effected repairs to the old house and they cannot be construed as new constructions. So far as the compliance of mandatory requirements contemplated by the provisions of Section 685 of the H.M.C Act is concerned, the lower appellate Court stated in paragraph '5' that it

affects the suit and it also places reliance in **Religious Endowments Department v. Visakhapatnam Municipal Corporation**¹. When the mandatory requirement of issuance of prior notice is not adhered to by the plaintiff and, more particularly, where law is also to the same effect in the aforesaid decision of this Court, certainly, the findings recorded by the lower appellate Court in dismissing the appeal on that short ground cannot be faulted. Thus, there is no perversity in recording that finding requiring interference by this Court and the present Second Appeal fails, as no substantial question of law arises.

Accordingly, the Second Appeal is dismissed at the admission stage itself.

Miscellaneous applications, if any pending in the instant appeal, stand closed. There shall be no order as to costs.

June 13, 2017

v v

A. SHANKAR NARAYANA, J

¹ 2003 (4) ALT 701