

Mr. A. M. Saraogi for Petitioner.
Mr. A. R. Metkari, AGP for Respondent No.1-State.
Mr. R. D. Mishra for Respondent No.2.

P.C. :

Heard Mr. Saraogi, learned Counsel for the petitioner, Mr. Metkari, learned Counsel for the respondent No.1-State and Mr. Mishra, learned Counsel for the respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 09.03.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.128 of 2017. By that order, the Appellate Court allowed the Revision Application preferred by the petitioner, hereinafter referred to as 'defendant' and set aside the order dated 08.03.2017 passed by the learned Judge, Court Room No.15 of the Court of Small Causes at Mumbai below exhibit-11 in R.A.E.Suit No.830 of 2015. The Appellate Court allowed the application exhibit-11 and framed following issues as preliminary issues:

- 1/5**

- (c) Whether this court has jurisdiction to entertain and try the suit?"

3. The Appellate Court permitted parties to adduce evidence, if any, and directed the trial Court to decide the aforesaid issues. Rule. Learned Counsel for the respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. Mr. Saraogi submitted that present Suit is instituted by the plaintiff - Chandrajit Ramsurat Yadav for possession of room No.5, Yadav Society Chawl, Datta Patil Compound, Tulshet Pada, Lake Road, Bhandup (W), Mumbai 400 078 (for short 'suit premises'). Earlier, present plaintiff's father Ramsurat had instituted R.A.E. & R. Suit No.693/1667/1992 against the present petitioner-defendant for recovery of possession of the suit premises. He submitted that the present plaintiff, being the son of Ramsurat, appeared as a Constituted Attorney and participated in the Appellate Court. He invited my attention to the order dated 29/30.11.2005 passed by the learned trial Judge in that Suit. The learned trial Judge dismissed the Suit by holding that there is no relationship of landlord and tenant between Ramsurat Yadav - the plaintiff therein and the present petitioner-defendant. Appeal preferred by the plaintiff - Ramsurat was also dismissed by the Appellate Court. It was held that plaintiff - Ramsurat failed to establish that he is the landlord / owner of the suit premises and that defendant is his tenant. Consistent with these findings, the Appellate Court dismissed the appeal on 09.03.2012.

5. Aggrieved by that decision, Ramsurat instituted C.R.A.No.537 of 2013 in this Court. By order dated 18.02.2014, this Court dismissed the

C.R.A. He submitted that the present Suit is instituted by Chandrajit, son of Ramsurat. Defendant, therefore, took out application exhibit-11 that for dismissal of R.A.E.Suit No.830 of 2015 instituted by Chandrajit under Order VII, Rule 11(a) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for want of cause of action as also the same is hit by the principles of res judicata. By order dated 08.03.2017, the learned trial Judge rejected the application. Aggrieved by that order, defendant instituted Revision Application before the Appellate Court, which allowed the Revision Application and framed preliminary issues. He submitted that in view of the findings recorded in the earlier round of litigation, the Appellate Court was not justified in framing the issues. He further submitted that L.C.Suit No.1821 of 2008 was instituted by the defendant herein against the Municipal Corporation of Greater Bombay where Ramsurat got himself impleaded as defendant by claiming to be landlord / owner of the suit premises. In that case, Chandrajit examined himself as Power of Attorney of Ramsurat. He has invited my attention to reference to these proceedings in paragraph 11 of the Appellate Court judgment. He submitted that instead of framing preliminary issues, the Appellate Court should have dismissed the Suit thereby allowing application made by the defendant under Order VII, Rule 11(a) of C.P.C. as also on the ground that present Suit is hit by principles of res judicata.

6. On the other hand, Mr. Mishra has invited my attention to the issues framed in the earlier Suit namely, R.A.E.&R. Suit No.693/1667 of 1992 and the findings recorded by the trial Court in paragraph 17 of the order dated 30.11.2005. He submitted that the learned trial Judge had dismissed the earlier Suit mainly on the ground that the municipal bills produced at exhibits M3 to M11 were not standing in the name of Ramsurat but were standing in the name of his son Chandrajit, who is

the present plaintiff. He, therefore, submitted that the said finding will not come in the way of the present plaintiff and it cannot be said that the Suit is barred by the principles of res judicata.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the order passed by the Appellate Court does not indicate that the Appellate Court has adverted its attention to the finding relied by Mr. Mishra in paragraph 17 of the trial Court's judgment dated 30.11.2005 in the earlier Suit. Mr. Saraogi submitted that in the same paragraph, the learned trial Judge also held that the municipal bills at exhibits M3 to M11 along with the receipts for the payment of the taxes do not show that it is pertaining to the suit premises. Be that as it may. A perusal of the impugned order passed by the Appellate Court does not indicate that this aspect is considered by the Appellate Court at all. In view thereof, during the course of hearing, Mr. Mishra fairly consented for setting aside the impugned order and submitted that the Appellate Court may be directed to decide the Revision Application afresh. Learned Counsel for the parties assure that they will appear before the Appellate Court on 02.07.2018 and for that purpose no fresh notice be issued to them.

8. In view thereof, by consent of the parties, impugned order dated 09.03.2018 passed by the Appellate Court is set aside. Revision Application No.128 of 2017 is restored to the file of the Appellate Court for deciding it afresh. Parties shall appear before the Appellate Court on 02.07.2018 and for that purpose no fresh notice be issued to them. The Appellate Court shall fix the suitable date and shall endeavour to dispose of the Revision Application within two weeks from fixation of the said date. All contentions of the parties on merits, including the

contentions recorded in this order, are expressly kept open. Till disposal of the Revision Application and for a further period of four weeks, the learned trial Judge will not proceed with the Suit. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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