

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL STAMP NO. 12133 OF 2018
WITH
CIVIL APPLICATION STAMP NO. 12134 OF 2018**

Ganshi Ranmal Shah
Aged: 67 years, Occu: Business
adult, Bombay Inhabitant, having
office at CTS No.95, Pushpa Park
Daftary Road, Malad (West)
Mumbai – 400 097

... Appellant
(Orig. Plaintiff)

Versus

1. The Municipal Corporation of
Greater Bombay,
a corporation duly incorporated
under the Bombay Corporation
Act, 1888 having its head office
at Mahapalika Bhavan, Mahapalika
Marg, Bombay – 400 001.

2. Nitesh Prataprai Kothari
Of Mumbai, Indian Inhabitant
Residing at Flat No.111/A,
Dariya Mahal 19th Floor, 80,
Napeansea road, Mumbai-400 006

... Respondents
(Orig. Defendants No. 1 and 2)

.....

Mr. Piyush M. Shah, Advocate for the Appellant.
Mrs. Madhuri More, Advocate for Respondent No.1-BMC.
Mr. Pradeep J. Thorat, Advocate for Respondent No.2.

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CORAM : A. S. CHANDURKAR, J.

ARGUMENTS HEARD ON : 12th DECEMBER, 2018

JUDGMENT PRONOUNCED ON : 18th DECEMBER, 2018

JUDGMENT :-

1. This appeal under Section 96 of the Code of Civil Procedure, 1908 has been filed by the original plaintiff who is aggrieved by the dismissal of Long Cause Suit No. 1002 of 2008.

2. It is the case of the plaintiff that he is in possession of premises admeasuring 10' X 40' which is situated at CTS No.95 of village Kurar. One Sadashiv Nalavade had constructed the suit premises prior to 1961-1962 and the same is assessed to Municipal taxes. Said Sadashiv Nalavade had transferred the suit premises to the plaintiff. The premises are shown in the city survey plan of CTS No.95 in the red colour boundary line. The plaintiff had dispute with one Pratap Rai Kothari and he had lodged false complaint against the plaintiff with the Municipal Corporation. On that basis the Corporation had issued a notice dated 12/02/2008 under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act'). The plaintiff

replied to that notice, but that explanation was not accepted. On that basis the plaintiff filed the aforesaid suit seeking an adjudication that the notice dated 12/02/2008 issued by the Municipal Corporation was illegal and not binding on the plaintiff.

3. The suit as filed was initially against the Municipal Corporation. Subsequently the complainant was directed to be added as defendant No.2. The defendants filed their written statement. According to the Corporation the structure in question had been assessed and remarks had been received from the Assessment Department wherein it was stated that the property in question had been demolished and thereafter amalgamated in the year 2002-2003. The documents relied upon by the plaintiff did not pertain to the disputed structure. A similar stand was taken by the defendant No.2 and it was pleaded that the plaintiff was not in possession of the structure standing at CTS No.95.

4. The plaintiff examined himself while the defendant No.2 examined his son. The witness of the Corporation did not remain present for the cross examination. The trial Court after considering the entire evidence on record held that the notice as

issued to the plaintiff was not proved to be illegal. The plaintiff was not able to show that the suit structure was actually situated in CTS No.95. As the evidence on record was found to be insufficient, the suit came to be dismissed. Being aggrieved, the plaintiff has filed the present appeal.

5. Shri. Piyush Shah, learned Counsel for the appellant submitted that considering the documentary evidence on record which was produced by the plaintiff, it was clear that the structure in question was in fact standing on CTS No.95, while the notice in question issued under Section 351 of the said Act was with regard to CTS No.75. It was submitted that the trial Court did not consider the stand as taken by the Corporation in its written statement. Referring to the assessment bill at Exhibit-12 it was submitted that the same indicated the plaintiff's name and that the property had been assessed even prior to 1961-1962. The electricity as well as the water bill also indicated that position. A specific stand was taken in the reply to the notice issued by the Corporation, but without considering all the material on record the trial Court dismissed the suit. The learned Counsel submitted that the notice in question was issued at the behest of defendant

No.2 and in view of the fact that the plaintiff had succeeded in the earlier litigation, he was not liable to be evicted pursuant to the impugned notice. Moreover, the trial Court ought to have protected the plaintiff's structure in the light of the documentary evidence on record. It was thus submitted that the judgment of the trial Court was liable to be set aside and the suit ought to be decreed.

6. Shri Pradeep Thorat, learned Counsel for the respondent No.2-defendant No.2 supported the impugned judgment. According to him the documentary evidence brought on record by the plaintiff was not sufficient to indicate that the structure in question was situated in CTS No.95. Though the notice under Section 351 of the said Act was issued to the plaintiff with the address shown at CTS No.75, the plaintiff accepted that notice and did not raise a challenge that the structure was standing on CTS No.95. The documents relied upon by the plaintiff were with regard to some other property and the plaintiff could not take advantage of the same. It was submitted that the trial Court after considering each and every document filed by the plaintiff, rightly concluded that the plaintiff had failed to prove that the notice in

question was illegal or that it related to a property situated in CTS No.95. It was thus submitted that the appeal was liable to be dismissed.

Mrs. Madhuri More, learned Counsel for respondent No.1 – Corporation supported the submissions as made on behalf of respondent No.2.

7. On hearing the learned Counsel for the parties the following points arise for determination :

- (i) Whether the plaintiff has proved that he was in occupation of CTS No.95 which vitiated the notice dated 12/02/2008 issued by the Corporation?
- (ii) Whether the judgment of the trial Court calls for any interference?

8. In the plaint as filed, it is the specific case of the plaintiff that the suit property is a room admeasuring 10' X 40' and is situated at Cts No.95 of village Kurar. The plaintiff has then relied upon various documents in that regard. The notice dated 12/02/2008 at Exhibit-16 that has been issued by the Municipal Corporation under Section 351 of the said Act shows the occupation of the plaintiff as regards CTS No.75. The notice is

accompanied by a sketch map. The defendant No.2 on the other hand has relied upon the property card of CTS No.75 which is at Exhibit-24. This document indicates the name of defendant No.2 as the owner of said property.

9. When it is the specific case of the plaintiff that the suit structure was standing on CTS No.95, the burden in that regard to prove the same was on the plaintiff. The plaintiff in that regard relied upon the documents at Exhibits No. 12 to 15 to show that the suit structure was standing on CTS No.95. However, on perusal of all these documents the same do not indicate that the suit structure is standing on CTS No.95. The plaintiff in his cross examination admitted that before filing the suit he did not confirm as to whether the suit premises was standing on CTS No.95 nor did he get any survey done to confirm that aspect. The trial Court has rightly found that as per the assessment bill at Exhibit-12 the amount mentioned was Rs. 1,87,015/-, while the structure in question was only measuring 10' X 40'. It was observed that the amount of assessment for the year 2002-2003 could not be such a huge amount considering the area of the structure.

10. Though, it is the specific case of the plaintiff that his structure is standing on CTS No.95, a specific stand in that regard has not been taken by the plaintiff in the reply at Exhibit-17 dated 14/02/2008. It was necessary for the plaintiff at the first instance while replying to the notice at Exhibit-16 to have taken such stand but the same has not been done. It has thus been rightly found by the learned Judge of the trial Court that the evidence on record is not sufficient to conclude that the suit structure was standing on CTS No.95.

11. Though the learned Counsel for the appellant sought to rely upon the averments made in the written statement filed by the Municipal Corporation, it is to be noted that the Municipal Corporation though filed an affidavit of its Officer in lieu of evidence, it failed to keep the said Officer present for cross examination. The plaintiff having approached the Court seeking declaration that the notice at Exhibit-16 was illegal, the burden to prove the same was on the plaintiff. It was not permissible for him merely to rely upon the stand taken in the written statement when there is not admission in favour of the plaintiff. It is found that the trial Court after considering the entire documentary evidence on

record has rightly found that the notice dated 12/02/2008 was not illegal. The plaintiff has failed to prove that the structure in question was standing on CTS No.95. In that view of the matter point No.(i) as framed is answered by holding that it was rightly held by the trial Court that the plaintiff had failed to prove that the notice at Exhibit-16 was illegal.

12. In the light of aforesaid finding, there is no reason to interfere with the judgment of the trial Court. The entire evidence has been considered by giving valid and cogent reasons. There is no other conclusion possible from the one drawn by the trial Court. The appreciation of evidence is not found to be perverse. Thus, point No.(ii) is answered by holding that the judgment of the trial Court does not called for any interference.

13. In the light of aforesaid discussion, I do not find any merit in the appeal. The judgment of the trial Court in Long Cause Suit No.1002 of 2008 dated 21/03/2018 is confirmed. The First Appeal stands dismissed with no order as to costs. Consequently, the civil application as filed does not survive and the same is also disposed of.

14. At this stage, learned Counsel for the appellant seeks continuation of the interim protection.

15. For a period of eight weeks from today the position as obtaining today shall be maintained.

(A. S. CHANDURKAR, J.)