

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 168 OF 2014
WITH
CIVIL APPLICATION NO. 196 OF 2014 IN A.O. NO. 168 OF 2014**

Prakash Krishnaji Kokate ... Appellant/Applicant

Vs.

Prakash Ganu Tanvade & Ors. ... Respondents

Mr. G.C. Singh and Ms. Shweta Singh, Advocate for the appellant/applicant.

Mr. Mohit P. Jadhav, Advocate for respondent no. 1.

Mr. Suyash Gadre a/w. Mr. Chetan Mhatre i/b. Utangale & Co., Advocate for respondent no. 4.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 5th January, 2018.

P.C.:

Admit. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 26th September, 2013 passed by the learned Judge of the City Civil Court, Dindoshi thereby holding that the Civil Court has no jurisdiction to try and decide the suit. The appellant/plaintiff has filed the suit for declaration in respect of nomination form filed by respondent no. 1/defendant no. 1 in the Society/defendant no. 2 on the ground that it is a forged fabricated document and on the basis of this forged

document, he has obtained the membership.

3. On perusal of the plaint, it is found that the plaintiff/appellant claims that he is eligible for the suit room wherein the appellant and respondent no. 1 both are in possession of the suit premises as on today. Both of them claim their eligibility through one Late Satyavati Shantaram Manjrekar, who is aunt of the appellant and cousin of respondent no. 1. So, it is a issue of who is having the better title and is eligible to claim their right under Housing Scheme of Slum Rehabilitation Authority (in short "S.R.A."). In the beginning, S.R.A was not made party to the suit, however, subsequently, S.R.A is made party in Appeal as respondent no. 4.

4. The learned counsel for the appellant submitted that he needs to amend the prayers and the plaint accordingly, as S.R.A is added as party/respondent no. 4.

5. The main contention raised by the learned counsel for respondent no. 1 while opposing this Appeal from Order, is that the appellant is claiming relief against the Society/respondent no. 2 and therefore, the matter should go before the Cooperative Court, as it is touching the business of the Society. He supports the order of the trial Court.

6. In order to decide the jurisdiction, the pleadings in the plaint are to be taken into account. The pleadings disclose that the appellant has first approached to the Competent Authority of S.R.A and S.R.A. by letter dated 8th January, 2011 has informed him that S.R.A. has no jurisdiction to entertain his complaint and Application because it is his family matter and S.R.A. has no jurisdiction.

7. In view of this and considering the allegations made of fraud and forgery, the Civil Court is the proper Court to try and entertain the suit. The learned Judge of the trial Court has lost sight of this point and hence, the order passed by the trial Court is quashed and set aside. Parties to appear before the Civil Court on 22nd January, 2018 at 11 a.m. The order of injunction granted that the appellant/plaintiff is not to be dispossessed except due process of law, to continue till the final hearing of the Suit. The parties to cooperate the trial Judge. The learned trial Judge may endeavour to decide the suit preferably till 31st December, 2018.

8. Appeal from Order is allowed. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)