

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.489 OF 2017

PRESIDENT, KARMACHARI GRUHNIRMAN SAHAKARI SANSTHA
 VS
 SECRETARY, GRAM PANCHAYAT AND OTHERS

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

Court's or Judge's orders

Shri G. M. Kubade, Advocate for the appellant.
 Shri A. M. Kukday, Advocate for the respondent No.1.

CORAM : A.S. CHANDURKAR, J.

DATE : SEPTEMBER 07, 2018.

The appellant is the original plaintiff which is a Society that has filed suit for removal of encroachment along with prayer for possession. According to the plaintiff, the suit property which is plot No.21 was reserved for development as a Garden. The Gram Panchayat was to manage the same. The Gram Panchayat in turn permitted the plaintiff to look after the said plot. In the meanwhile, the defendant Nos.2 to 9 encroached upon the suit property and despite notices being issued by the Tahasildar, the Gram Panchayat failed to remove the encroachment. Hence, the aforesaid suit was filed. The trial Court has dismissed the said suit but the appellate Court decreed the suit against the defendant Nos.2 to 9 by directing them to remove encroachment. Thereafter possession has been directed to be delivered to the defendant No.1.

The appeal filed by the defendant Nos.2 to 9

challenging the said decree has been dismissed by this Court in Second Appeal Stamp No.13194/2015 on 8-2-2017. The present appeal has been filed by the original plaintiff challenging that part of the decree that directs delivery of possession to the defendant No.1. As noted above, the possession has been directed to be delivered after removal of the encroachment to the Gram Panchayat. It is submitted by Shri G. M. Kubade, learned Counsel for the appellant that though the encroachment has been directed to be removed, the property ought to have been delivered to the plaintiff as in its suit the said decree has been passed. Instead, the possession is directed to be delivered to the Gram Panchayat. It is further submitted that the Gram Panchayat is not interested in removing the encroachment and the same would be a fact in favour of the defendant Nos.2 to 9.

Shri A. M. Kukday learned Counsel for the respondent No.1 - Gram Panchayat submits that various notices have been issued to the defendant Nos.2 to 9 calling upon them to remove the encroachment. It is submitted that as the land in question vests in the Gram Panchayat the said decree does not deserve to be interfered with.

Heard learned Counsel for the parties.

The decree for removal of encroachment committed by the defendant Nos.2 to 9 has become final. As it is not in dispute

that the plot in question vests in the Gram Panchayat, the decree as passed directing delivery of possession to it cannot be said to be illegal. The property was given to the plaintiff only for its development.

The Second Appeal, therefore, does not give rise to any substantial question of law. The same is accordingly dismissed.

As regards the apprehension of the plaintiff that the encroachment would not be removed it is directed that Gram Panchayat in terms of the decree as passed shall take all necessary steps for removal of the encroachment. To ensure that the decree in question is enforced against the defendant Nos.2 to 9, the Gram Panchayat shall file affidavit of its Secretary within a period of four weeks from today indicating the steps taken by it for removal of said encroachment. List the Second Appeal for said purpose on 05-10-2018.

JUDGE

Muley