

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.905 OF 2016

Smt. Rukhmanbai wd/o Eknath Lingayat and others

...Versus...

Kazi Uruj Ahemad Siddiqui s/o Kazi Gaus Mohiyoddin Siddiqui and others

...

Mr. D.L. Khivesara, Advocate for the appellants

Mr. A.D. Kasliwal, Advocate for the respondent Nos.1 to 4

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 18th FEBRUARY, 2019

PRONOUNCED ON : 08th APRIL, 2019

ORDER :

1 Present appeal has been filed by the original plaintiffs challenging the Judgment and Decree passed in Regular Civil Appeal No.168/2014 by learned Adhoc District Judge-3, Aurangabad dated 03.02.2016, whereby the appeal filed by the present respondents came to be allowed. The present respondents had challenged the Judgment and Decree passed in Regular Civil Suit No.2044/2012 by 7th Joint Civil Judge Junior Division, Aurangabad in the said appeal. Present appellants are the

original plaintiffs, who had filed the said suit for perpetual injunction restraining the defendants from causing obstruction to the peaceful possession of the plaintiffs over suit premises admeasuring about 200 square feet (8.3 x 24 feet) situated at CTS No.6265, Kirana Chaudi, Aurangabad. (Parties are referred as per their nomenclature in the suit.)

2 Original plaintiffs had come with the case that they are the tenants in respect of the suit premises since 1959. They are running laundry in the suit premises. Defendants are the landlords and plaintiffs have regularly paid rent for the same. It is stated that under the garb of road widening scheme of Municipal Corporation, Aurangabad, defendants are trying to dispossess them. Plaintiffs had applied Corporation seeking permission to repair the suit premises leaving the road affected portion. However, no heed was paid. Plaintiffs have knowledge that defendants would be demolishing the structure in CTS No.6265 in order to develop the property and therefore, plaintiffs would be forcibly evicted. Hence suit.

3 Defendants have resisted the claim of the plaintiffs by filing the written statement. It is stated that there was no cause of action for plaintiffs to file the suit. The actual tenanted area in possession of the plaintiffs is 6.2 x 16 feet. But plaintiffs have unnecessarily shown excess area and therefore,

description of the suit property is challenged. They have specifically denied that they want to evict the plaintiffs by unlawful means under the garb of road widening scheme. The Municipal Corporation, Aurangabad had decided to implement the road widening scheme by letter dated 10.09.2012. Suit premises is affected by the said scheme and therefore Corporation had sought acquisition of the affected portion. Plaintiffs have undertaken vide letter dated 05.10.2012 to vacate the suit premises to the extent of affected portion. There was no need for them to disturb the possession of the plaintiffs. Since the suit has been filed without any cause of action, they prayed for dismissal of the same.

4 Taking into consideration the rival contentions, issues came to be framed, parties have led oral as well as documentary evidence on record. After taking into consideration the evidence the learned Trial Court has held that there was cause of action for filing suit and the plaintiffs are entitled to get the relief, thereby the suit came to be decreed and therefore, the defendants challenged the said decree in appeal. The appeal came to be allowed on merits, thereby the decree that was passed by learned Trial Court was set aside. The suit was dismissed. Hence, this Second Appeal.

5 Heard both sides. It has been vehemently argued on behalf of

the appellants that the First Appellate Court had not considered the evidence properly. A perverse finding has been given, that there was no cause of action for the plaintiffs to file the suit. The plaintiffs were not entitled to the relief of perpetual injunction. When exactly opposite findings are given, then it can be seen that it is a perverse finding. When perverse finding is there based upon wrong assumptions and presumptions, then definitely, case is made out for framing substantial questions of law requiring admission of the Second Appeal. It has been further submitted that the appellants got the knowledge about the road widening process undertaken by Municipal Corporation, Aurangabad, but for that purpose no notice was issued by the Corporation to the plaintiffs. When the plaintiffs made application to get certain documents under Right to Information Act, it was revealed that defendants are constructing a huge building, in fact, all other tenants have vacated the premises and gave possession to the defendants. Only the suit premises, which is the tenanted premises of the plaintiffs was standing. Plaintiffs have given it in writing to the Municipal Corporation that they would vacate the premises to the extent of the portion of the suit premises is affected by road widening. However, since the huge structure is coming up behind the suit premises, the defendants want to get rid of the structure in front of their huge building and therefore, they are interested in forcibly

evicting the premises.

6 Per contra, the learned Advocate for the respondents/plaintiffs submitted that in fact, the learned Trial Court had taken a wrong approach and it has been corrected by the First Appellate Court. Though it is not in dispute that plaintiffs are the tenants in respect of suit premises, the another fact, that is also admitted is that the suit premises is affected by the road widening scheme. If the entire suit premises is affected by the road widening scheme, there is absolutely no necessity for the defendants to get the possession of the suit property by evicting plaintiffs by any mode. It has come on record in the cross of the witnesses of the plaintiffs that the door frame, which is the only supporting structure, was not even touched by the defendants. This shows that defendants have no intention to take forcible possession of the suit premises. No substantial question of law has been shown. He relied on the decision in **Damodar Lal vs. Sohan Devi and others, 2016 ALL SCR 379**, wherein it has been held that

“Inadequacy of evidence or a different reading of evidence, is not perversity. Safest approach on perversity is a classic approach on the reasonable man's inference on the facts to him, if the conclusion on facts in evidence made by Court below is possible, there is no perversity.”

He further relied on the decision in Narayanan Rajendran and another vs. Lekshmy Sarojini and others, 2009 ALL SCR 1511, wherein it has been held that

“When Section 100, C.P.C. is critically examined then, according to the legislative mandate, the interference by the High Court is permissible only in cases involving substantial questions of law. The scope of interference by the High Court in second appeal under Section 100, CPC after 1976 Amendment is strictly confined to cases involving substantial questions of law. The High Court would not be justified in dealing with any second appeal without first formulating substantial question of law.”

7 The first and the foremost fact, that is required to be considered is that there is no concurrent finding in this case. However, that *per se* will not conclude that case is made out to admit the Second Appeal. As laid down in **Narayanan's** case (supra) the High Court will not be justified in dealing with any Second Appeal without first formulating substantial question of law. Here, in this case both the learned Courts have not framed issue/point as to whether plaintiffs are the tenants of 8.3 x 24 feet or 6.2 x 16 feet only. Even if we consider that, that may not be real fact in issue, yet both the Courts ought to have considered as to whether the entire property would

be affected by road widening scheme or not. Though it has been pleaded by the defendants that the Municipal Corporation, Aurangabad had decided to implement the road widening scheme by letter dated 10.09.2012, it has been extracted from DW 1 Javed, as to when the notice regarding road widening was given to him by the Municipal Corporation. He has answered that he got the information in 2006 and in the same year he had communicated the said information to the tenants. When this fact is extracted in the cross, it gives weightage to the said statement. When clear understanding was given to the plaintiff that the suit premises would be acquired for road widening, all the necessary information ought to have been collected by the plaintiffs. It would have given a clear picture as to whether entire property would be affected or only portion of the same would be affected. In the cross of the plaintiff as well as her son, it has come on record that they have given it in writing to the Municipal Corporation that they would vacate the premises, which would be affected by road widening scheme. All these facts were necessary for the purpose that if entire property would be acquired by the Municipal Corporation or would be demolished by the Municipal Corporation for the purpose of road widening then, why defendants would make effort to evict the plaintiffs. In spite of the said knowledge and undertaking given to the Municipal Corporation, plaintiffs have not taken any action against

Municipal Corporation nor prayed any kind of relief from the Corporation.

8 The fact, which has come on record in the evidence is that there were about 18 tenants. All others have vacated, but only plaintiffs are remaining. It has also come on record that other premises which was in the possession of other tenants has been demolished and only the suit premises is remaining. It has also come on record that the huge building is coming up behind the suit premises. What would have been the benefit to defendants by evicting the plaintiffs is a question, because ultimately the suit premises would be affected by road widening and for that purpose it ought to have been necessary for the plaintiffs to bring it on record that the entire premises is not affected by the road widening but only the portion of it would affect. Without bringing that evidence on record it cannot be stated that the defendants were interested in evicting the plaintiffs.

9 Plaintiffs had filed some complaints with the police alleging that the defendants are taking action for forcible eviction. Learned First Appellate Court has made some observations regarding the same. However, those observations even if are kept aside, yet that will not give to the plaintiffs to prove or show that defendants were trying to dispossess them without adopting due procedure of law. On the contrary, in the cross examination of

PW 2 Ravi, it has come on record that defendants had not obstructed him from putting tarpaulin on the suit premises. He says that the defendants were not present. Yet it appears that there was complaint filed against the defendants with the police. No evidence has been produced showing that even during the life time of original tenant i.e. predecessor of plaintiffs there was an attempt by the defendants to evict him and then he had taken action. The fact remains, is that even after the alleged complaints were filed, no action has been taken by police. Those complaints were filed on 08.10.2012, 18.10.2012, 22.10.2012 and the suit has been filed on 02.11.2012, with contention that by taking disadvantage of the fact that the suit property would be affected by road widening, the defendants are trying to evict the plaintiffs. In fact, the road widening notice was given in 2006 itself. Therefore, taking into consideration these aspects the conclusions drawn by the first appellate Court cannot be said to be perverse and no substantial question of law has been pointed out. Merely because the plaintiffs are in possession and some other activity is going on by the side of the suit premises, it cannot be inferred that the defendants were then interested in dispossessing the plaintiffs. At the costs of repetition, it can be again said that plaintiffs have not produced on record, as to how much area of the suit property would be affected by the road widening. If only some portion is

going to be affected, then only there was a room to infer that defendants are interested in dispossessing the plaintiffs. If the entire suit property would be affected, then it is absolutely not necessary for the defendants to make any effort. Road widening is done for the development of the city. Even the plaintiffs had given undertaking that they would co-operate with the corporation. If at all they have any kind of grievance or even right, then the remedy is elsewhere. They cannot seek equitable relief under such circumstance. No substantial question of law has been raised. Hence, the Second Appeal is disposed of as “**Not admitted**”.

(Smt. Vibha Kankanwadi, J.)

agd