

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 621 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 993 OF 2016

Sumatilal Popatlal Shah

....Appellant

V/s.

State of Maharashtra, through
the Collector

....Respondent

* * * *

Mr. Satyajeet Shirke h/f. Mr. U.P. Warunjikar, Advocate for
the appellant.

Mr. Abhijit Patil i/by. Mr. Vijay Patil, Advocate for
respondents no.2 to 4.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 14th March, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. The matter has been placed for speaking to minutes of the order dated 15th January, 2019.
3. It is pointed out that, in the said order, in paragraph no.5, the number of the Civil Application ought to have been mentioned as '993 of 2016' instead of '55 of 2016'.

4. The correction be carried out in the said order and the order be read accordingly.

(SANDEEP K. SHINDE, J)

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Sumatilal Popatlal Shah

....Appellant

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* * * *

Mr. Uday P. Warunjikar, Advocate for the appellant.

Ms. Tanya Goswami, AGP for respondent no.1.

Mr. Saurabh S. Kurade i/by. Mr. Vijay D. Patil, Advocate for
respondents no.2 to 4.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 15th January, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. Appellant herein had filed a suit being Special Civil Suit No. 37 of 2007 for injunction and possession against

the respondents on the ground that the respondents, without any authority, attempted to enter the suit lands and infact had caused damage to the standing trees by digging a trench. The suit was dismissed by the trial Court and the decree was confirmed in Appeal. It is against the judgment and decree of the Appellate Court, this Appeal is preferred.

3. It is urged by the learned Counsel for the appellant, that both the Courts below have committed an error by holding that appropriate remedy for the appellant was to file a reference and/or to adopt appropriate remedies under the Land Acquisition Act. Be that as it may, the fact remains that, it is the appellant's case that the subject suit was filed by them before initiation of the acquisition proceedings by the respondents. To ascertain this fact, I have called upon both the parties to place on record a copy of the Award which was admittedly passed in respect of the suit land in August, 1994. However, both the parties could not place copy of the Award on record for one reason or another. It appears that the Notification under Section 4 was issued in

1966 which fact is disputed by the learned Counsel for the appellant. However, it is admitted fact that the Award has been passed in August, 1994. It is the case of the plaintiff that, the respondents, without any authority, entered in the suit land, dug the trench and caused damage to the standing trees which forced them to file the said suit.

4. I, have gone through the judgment of both the Courts below. Since the Notification under Section 4 has not been placed on record, I have to accept that it was issued in November, 1966 as stated in the judgment of the Appellate Court. Thus, it appears that, when the suit was filed, the proceedings under the Land Acquisition Act were initiated and infact the Award was passed when the Appeal was pending before the District Court. It appears that the brother of the plaintiff had given a consent, on the basis of which the respondents entered in the land of the plaintiffs and adopted the proceedings for acquiring it. The factum of consent has not been disputed by the learned Counsel for the appellants. In view of this finding recorded by both the

Courts below, it cannot be said that the respondents entered in the suit land unauthorisedly and without any authority. Further, it also appears that Exhibit-117, the possession receipt was executed by the appellant-plaintiff in respect of the subject land. It is not pointed out by the plaintiff as to whether he had participated in the acquisition proceedings or not. Thus, considering the facts of the case and particularly that the Award has already been passed, I do not see any reason to interfere with the concurrent finding of facts. In my view, the Appeal does not give rise to any substantial question of law. The Appeal is accordingly dismissed.

5. In view of dismissal of the Appeal, the Civil Application No.993 of 2016 taken out for stay does not survive. The same also stands disposed of.

(SANDEEP K. SHINDE, J)

Note : The order is corrected pursuant to speaking to minutes order dated 14th March, 2019.