

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 338 OF 2016
WITH
CIVIL APPLICATION NO. 617 OF 2016

Shri Tukaram Daulu Moharekar	.. Appellant
Vs.	
Shri Sambhaji Namdeo Sawant	.. Respondent

Mr.D.B.Shinde I/b Mr.Vikas M.Mali, for the Appellant.
Mr.Suresh M.Kamble, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 25th JULY, 2019

P.C. :

. Heard learned Counsel for the appellant and learned Counsel for the respondent.

2. The appellant is the original defendant No.1. The respondent – plaintiff who is a practicing Advocate has filed the Suit claiming compensation against the appellant of Rs. 1,00,000/- on the premise that he was maliciously persecuted by

the defendant. It appears that there was some dispute in respect of the sale deed of land survey No. 211/1A. The plaintiff had filed the Suit for cancellation of sale deed executed in favour of the defendant. The defendant alleged that in January 2008, he had harvested corn crop in the land possessed by him out of survey No.211/1A. It is alleged that the plaintiff committed theft of the crop and complaint therefore came to be lodged to the police station on the basis of which the appellant filed Regular Criminal Case No. 47 of 2008 before J.M.F.C. Shirala. The plaintiff was acquitted of the charges levelled under Section 379 read with 34 of IPC.

3. The plaintiff therefore filed Regular Civil Suit No. 65 of 2011 for malicious prosecution claiming sum of Rs.1,00,000/- as compensation. The trial Court by judgment and decree allowed the Suit and awarded the compensation of Rs.50,000/-. The appellant preferred Appeal against the judgment and decree of the trial Court which came to be dismissed by First Appellate Court.

4. Learned Counsel for the appellant contended that as according to him and on allegation there was theft by the plaintiff, criminal complaint came to be filed by the defendant. The acquittal of the plaintiff is not a clean acquittal, but by giving benefit of doubt. He would therefore urge that in these circumstances, as the criminal case filed by him resulted in acquittal of the plaintiff by giving benefit of doubt, the Courts below were not justified in coming to the conclusion that this was a case of malicious prosecution.

5. I have gone through the findings of the Courts below. The Appellate Court in paragraph 20 has observed that based on the documentary evidence on record that on 23/09/2008, the defendant was not in possession of the disputed portion of survey No. 211/1A. Despite existence of the injunction order against the defendant, the allegation about committing theft by the plaintiff was made in Criminal Case No. 47 of 2008. The Courts below concurrently found that this was done with malicious intent to harass the plaintiff. Elaborate

reasons are recorded by the trial Court while decreeing the plaintiff's Suit & awarding compensation. Having gone through the findings of the Courts below, I see no reason to interfere with the said findings. The present Appeal does not involve any substantial question of law. The same is dismissed. In view of dismissal of the Appeal, Civil Application also stands disposed of.

(M.S.KARNIK, J.)