

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 647 OF 2013

Shri Pinto Paul

...Applicant

Versus

Aliarsingh Kunai Singh (since deceased)
and others.

...Respondents

....

Mr. Dharendra D. Singh, Advocate for the Applicant.

Mr. P.J. Thorat a/w. Aditi Naikare, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 25th JUNE, 2019

P.C.

1. By a separate order passed today, Civil Application No.213/2019 for restoration of present C.R.A. is allowed and C.R.A. is restored to its original position. By consent of the parties, C.R.A. is taken up for admission.

2. Heard Mr. Dharendra Singh, learned counsel for the applicant and Mr.P.J. Thorat, learned counsel for the respondents, at length.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'defendant', has challenged the order dated 29.6.2013 passed by the Appellate Bench of the Small Causes Court at Bandra, Mumbai

below Exhibit-8 in Appeal No.2/2005 as also the judgment and decree dated 29.6.2013 passed by the Appellate Court in Appeal No.2/2005. By order dated 29.6.2013 below Exhibit-8 the Appellate Court allowed application Exhibit-8 filed by the respondents, hereinafter referred to as the 'plaintiffs', under Order XLI Rule 27 of C.P.C. and granted permission to the plaintiffs to produce additional evidence of Property Register Card, 7/12 extracts and mutation entries. By order dated 29.6.2013 in Appeal No.2/2005, the Appellate Court allowed the appeal and set aside the decree dated 18.3.2004 passed by the learned trial Judge in R.A.E. & R. Suit No.1059/3562 of 1979. The Appellate Court remitted the matter to the trial Court for fresh decision after giving opportunity of hearing to both sides.

4. In support of this application, Mr. Singh has invited my attention to issue No.3A, which is to the following effect :

“3-A. Whether this Court has jurisdiction to entertain and try this suit ?”

5. Mr. Singh submitted that the issue was framed as far back as on 25.8.2003. He invited my attention to paragraphs-8 to 11 of the trial Court's judgment and submitted that the learned trial Judge held that the land where the suit premises is standing was acquired by the Maharashtra Housing and Area Development Authority (for short,

'MHADA'). In view of Sections 4(1) and 4(4)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'), Act is not applicable. As the land is acquired by MHADA, the structure standing thereon is exempted from the operation of the Act. The Small Causes Court has no jurisdiction to entertain and try the suit.

6. Mr. Singh submitted that aggrieved by this order, the plaintiffs preferred appeal. During pendency of appeal, they took out application Exhibit-8 under Order XLI Rule 27 of C.P.C. for adducing additional evidence. By order dated 29.6.2013 the Appellate Court allowed the application and permitted production of additional evidence in appeal. He submitted that the Appellate Court was not justified in allowing the application under Order XLI Rule 27 of C.P.C. as no case was made out by the plaintiffs.

7. Mr. Singh further submitted that the Appellate Court while remanding the matter to the trial Court did not set aside the finding recorded against issue No.3A. The course adopted by the Appellate Court was, therefore, perverse. In any case, if the Appellate Court was justified in remitting the matter to the trial Court, it should have imposed stringent conditions. He, therefore, submitted that for all these reasons the application requires consideration.

8. On the other hand, Mr. Thorat supported the impugned

orders. He invited my attention to paragraph-3 of the written statement filed by the defendants. In paragraph-3, the defendant contended that the area where the suit premises is situate has been declared as a vacant land under the Maharashtra Vacant Lands Act. On this ground, the plaintiff is not entitled to enforce his alleged right as the Small Causes Court has no jurisdiction to entertain and try the suit. He submitted that in pursuance thereof on 25.8.2003 the additional issue was framed. This was in relation to the contentions raised by defendant No.1 in paragraph-3 of the written statement. He submitted that the trial Court did not frame any issue as regards applicability or otherwise of Sections 4 and 4(4)(a) of the Act. The plaintiffs, therefore, did not get any opportunity to adduce evidence on this issue before the trial Court. He also invited my attention to paragraph-16 of the final order dated 29.6.2013. In paragraph-16, the Appellate Court recorded concession made on behalf of Advocate for the defendant that there was no specific issue pertaining to whether or not Section 4 of the Act is attracted in the matter. He, therefore, submitted that no case is made out for interfering with the impugned order as by that order, the Appellate Court has given opportunity to both the sides to adduce evidence to substantiate their case as regards acquisition of land by MHADA.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the order dated 25.8.2003 shows that at the stage of argument of the suit, the learned Advocate for the defendant submitted that issue of jurisdiction is required to be framed in view of contents of paragraph-3 of the written statement. Upon considering the written statement, the learned trial Judge framed the issue and directed the parties to file affidavit of documents, list of witnesses if any. I have already extracted issue No.3-A earlier. Coupled with this, a perusal of paragraph-16 of the final order dated 29.6.2013 shows that the issue pertaining to applicability of Section 4 or Section 4(4)(a) of the Act was not specifically raised. Thus the parties did not get opportunity to adduce evidence on this aspect.

10. Mr. Singh submitted that the Appellate Court did not set aside the finding recorded by the trial Court against issue No.3-A. I do not find any merit in this submission. As mentioned earlier, the entire judgment of the trial Court is set aside and the matter is remitted giving opportunity to the parties to adduce evidence. In other words, the Appellate Court has not exercised power under Order XLI Rule 25 of C.P.C. by keeping the appeal pending and calling finding of trial Court on certain issues.

11. As mentioned earlier, by final order dated 29.6.2013, the Appellate Court remitted the matter to the trial Court by giving opportunity of adducing evidence to both sides. The parties will be at liberty to file additional evidence as regards applicability of Section 4(4) (a) of the Act in view of acquisition by MHADA. All contentions in that regard are expressly kept open. The learned trial Judge will decide this issue uninfluenced by the observations made in the order dated 29.6.2013 below Exhibit-8 and in the final order dated 29.6.2013. Subject to this, Civil Revision Application fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)