

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION (STAMP) NO. 28545 OF 2019**

Dr. Surendra Chhotelal Garg

(Deceased) through LRs. & Ors.

.....Petitioners.

Vs.

Bechan Basai Chaurasiya

(Deceased) through LRs. & Ors.

.....Respondents.

Mr. Ram Singh for the Petitioners.

Mr. P.J. Thorat, for the Respondents.

CORAM : A. S. GADKARI, J.

DATE : 27th NOVEMBER, 2019.

P.C.:-

By the present Petition, the Petitioners have impugned Order dated 17th October, 2019 passed below Exhibit-20 in Appeal No. 5 of 2016 filed by the Appellant thereby, rejecting the Application preferred by the Petitioners.

2 Heard the learned counsel for the Petitioners at length and the learned counsel for the Respondents. Perused the entire record.

3 The record indicates that, the Small Causes Court, at Mumbai (Bandra Branch) has passed a decree of eviction against the Petitioner (Original Defendant No.2) on 9th December, 2015. The Petitioner has

preferred an Appeal No. 5 of 2016 against the said Judgment and Decree, which is pending for final adjudication before the Appellate Bench of the Small Causes Court, Mumbai.

4 It is the contention of the Petitioners that, after filing of the Appeal, the Petitioners came across with certain documents, including a decree passed in L.C. Suit No.4217 of 1994 wherein, the City Civil Court, at Mumbai has recorded finding and declared that, the Suit land is a slum. That, the Respondent landlord was Plaintiff No.4 in the said Suit. That, the Respondent landlord by suppressing the said fact, has instituted the aforestated Suit in the Small Causes Court and has obtained a decree by playing fraud upon the Court. In the premise, the aforestated Application below Exhibit 20 was filed by the Petitioner for setting aside the decree passed by the Trial Court, as it is of nullity and non-est.

As noted earlier, the Trial Court by its impugned Order dated 17th October, 2019 has rejected the said Application.

5 The learned counsel for the Petitioners with unnecessary aggressiveness tried to impress upon this Court that, the decree obtained by the Respondent landlord is by way of playing fraud upon the Court. The record indicates that, the Petitioner was a party to the Suit No. 4217 of 1994 and was duly served with the summons. That, the Petitioner also participated in the said proceedings and after hearing him, the impugned decree dated 9th December, 2015 has been passed. The record further

indicates that, in para No.3 of the impugned Order, the Trial Court has observed that, the Petitioner had filed an Application dated 2nd March, 2009 for grant of permission to amend his written statement mainly on the ground that, the Suit Premises is declared as slum as per the Notification published in Government Gazette. That, the said Application has been rejected by the learned Judge of the Trial Court by its Order dated 8th September, 2009.

6 The record further indicates that, the Petitioner has filed an Application below Exhibit 25 under Order 41 Rule 27 of the Code of Civil Procedure for adducing additional evidence in the Appeal and the said Application along with Appeal are pending for final adjudication. The Petitioner, by way of filing an Application below Exhibit 20 wants the Appellate Court to look into the additional evidence produced by him before final hearing of the Appeal. As noted earlier, the Application under Order 41 Rule 27 is pending for hearing before the Appellate Court. The Appellate Court, has taken into consideration various aspects of the matter and rightly rejected the Application below Exhibit 20.

7 The contention of the Petitioner at this juncture cannot be accepted, because he has to lead his evidence in support of his case before the Appellate Court. On the basis of mere presumption and assumption, as the Petitioner has tried to impress upon this Court, it cannot be accepted as a gospel truth.

In view thereof, I find that the Appellate Court has not committed any error either in law or on facts while rejecting the Application preferred by the Petitioner by its impugned Order dated 17th October, 2019.

I find no merits in the Petition. Petition is accordingly dismissed *in limine*.

(A.S. GADKARI, J.)