

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No.80/2018
Ghanshyam Sahu (D) Through LRs Vs. Eknath Saraf

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.R. Gupta, Advocate for appellants
Mr. Rohit Joshi, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 30, 2019

By this appeal, the appellants (legal representatives of the original defendants), have challenged concurrent judgments and decrees passed against them by the two Courts below, whereby suit for declaration and possession filed by the respondent (original plaintiff), has been allowed.

2. In this appeal, although notice was issued by order dated 26/06/2019 and interim stay was granted in favour of the appellants, no substantial question of law was framed.

3. The brief facts leading up to the filing of present appeal are that the respondent filed a suit for declaration, possession and for removal of encroachment by predecessor of the appellants. The original defendants resisted the said suit claiming that the respondent was not owner of the suit property and

further that there could not be said to be any encroachment on his part in the suit property. One of the contentions raised on behalf of the original defendants was that the suit property fell within area notified as slum by the Government and that, therefore, in the absence of permission from the Competent Authority, the suit was not maintainable.

4. The Court of the Joint Civil Judge (Junior Division), Chandrapur (Trial Court), passed its judgment and decree on 15/12/2004, holding on all issues in favour of respondent. Although, no issue was framed on the question of issuance of Notification whereby the suit property fell within slum area, it was observed that the material on record clearly demonstrated that when the suit was filed no such Notification was in vogue and that the same was issued during pendency of the suit. It was also observed that the suit was maintainable and that the decree could be executable after permission from the Competent Authority. Yet, in the operative portion of the judgment and decree of the Trial Court, the suit in its entirety was decreed and direction was given for removal of encroachment and handing over vacant possession to the respondent.

5. Appeal filed by the appellants as legal representatives of original defendants was dismissed by Judgment and order dated 25/09/2017 and the

decree granted by the Trial Court stood confirmed. The learned counsel for the appellants raised only two contentions before this Court. Firstly, that the suit itself was not maintainable in absence of permission from the Competent Authority in the face of the Notification, issued by the Government whereby the suit property was included in slum area. Secondly, it was contended that the plea of adverse possession was raised by the respondent (defendant), which was never considered by the two Courts below.

6. On the other hand, the learned counsel for the respondent submitted that the Courts below had appreciated the fact that when the suit was filed the Notification question was not issued and that, therefore, there was no substance in the contention that the suit was not maintainable in the absence of permission from the concerned Competent Authority. As regards plea of adverse possession, it was submitted that the Trial Court has correctly noted that the material on record demonstrated that the suit property was indeed owned by the respondent and that although the acquisition proceeding was initiated, the same was dropped. Therefore, the aforesaid plea raised on behalf of the appellants on the basis that the land belonged to the Government, was not sustainable.

7. Having perused the Judgments and orders passed by the two Courts below and the material on

record, it is found that the plea of adverse possession is absolutely without any substance because the material on record has been correctly appreciated by the two Courts below to find that the plea is not supported by any cogent material on record.

8. But, on the question of Notification, issued by the Government whereby the suit property was covered under slum area, the following substantial question of law arises.

1. Whether the Courts below were justified in decreeing the suit filed by the respondent in its entirety without appreciating the fact that when Notification was issued by the Government whereby the suit property fell in slum area, even if the suit filed prior to issuance of the Notification was maintainable, the decree could be executable only after permission from the Competent Authority?

9. Heard learned counsel for rival parties on the said substantial question of law.

10. The learned counsel for the respondent fairly submitted that this Court had already held in similar controversy that arose before this Court that when such Notification was issued during pendency of the suit, the decree could be executed only after permission from the Competent Authority. This was so

held in Judgment and order dated 24/07/2017, passed by this Court in Second Appeal No.198/2004 (Hardayalsingh S/o Khushalsingh Sandhu and others Vs. Eknath S/o Wasudeo Saraf). It was held in paragraph 10 of the said Judgment that in such cases where Notification was issued during pendency of the suit, the decree passed in favour of the plaintiff could be executed only after obtaining permission from the Competent Authority.

11, In view of above, the aforesaid substantial question of law is answered in favour of the appellants and it is held that although the decree concurrently passed by the two Courts below on merits against the appellants is sustainable, it needs to be modified to the extent that the decree itself will be executable only after permission from the Competent Authority under the provisions of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971.

12. Accordingly, the appeal is partly allowed and it is held that the decree passed by the Courts below is confirmed, subject to the rider that it can be executed only after permission from the Competent Authority under the provisions of the Maharashtra Slum Area (Improvement and Clearance and Redevelopment) Act, 1971.

13. Appeal is disposed of in above terms.
14. No order as to costs.

JUDGE

MP Deshpande