

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

SECOND APPEAL NO. 555 OF 2018

Abdul Ansar Abdul Gaffar

vs.

The State of Maharashtra thr. Collector Akola and anr.

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

Court's or Judge's orders

Shri. A. B. Mirza, Advocate for appellant.
Smt. Mrunal Naik, AGP for respondents.

CORAM : Manish Pitale J

DATED : 23.08.2019

By this appeal, the appellant has challenged the Judgment and Order passed by the appellate Court dismissing his appeal and confirming the Judgment and order passed by the trial Court, whereby, suit for injunction filed by him stood dismissed.

2. The appellant had filed suit for injunction before the Court of Civil Judge Senior Division, Akola, claiming that the cause of action to file the said suit arose on 29.12.2008, when Officers of the respondent No.2 Municipal Council, Akot reached his shop and claimed that an encroachment removal campaign was under way due which, the shop was to be removed/ demolished. Since, the appellant apprehended dispossession, he immediately approached the aforesaid Court on 30.12.2008 by filing the said suit for injunction.

3. Before the trial Court, the appellant contended that he had right in the suit property to the extent of not being dispossessed, since the respondent No.1 had accepted an amount of Rs.10,000/- from him and further since the respondent No.2 has also charged amounts from him, from time to time for possession of the suit property. The trial Court found that the said amount of Rs.10,000/- was payment towards fine amount charged against the appellant for unlawful possession of the property in question. The trial Court found that there was not an iota of material placed on record by the appellant to establish any legal right in the said suit property. On this basis, the trial Court found that there was no substance in the prayer for injunction made on behalf of the appellant and accordingly, the suit was dismissed.

4. The appellant challenged the said order of the trial Court by filing appeal before the Court of District Judge -1 Akot. By the impugned Judgment and Order, the appellate Court has confirmed findings of the trial Court and dismissed the appeal.

5. It was submitted by the learned counsel for the appellant that the receipt for Rs.10,000/- issued by the respondent No.1 did not specify that it was towards payment of fine/penalty for unlawful possession of the suit property and that therefore, the findings rendered by the two Courts below were erroneous. It was further submitted that the appellant was in settled possession of the suit property and that he had been paying certain charges from time to time even to the respondent No.2 i.e. Municipal Council. On this basis it was contended that the findings rendered by the two Courts below

were erroneous.

6. A perusal of the Judgment and Order passed by the two Courts below shows that the findings rendered by the said Courts are based on proper appreciation of the material and evidence on record. It has been found that the appellant has failed to produce any material to show even a semblance of right in the suit property and that the amount of Rs.10,000-/ charged from the appellant was towards fine/penalty for unlawful possession of the suit property. Merely because the respondents charged the aforesaid amounts from the appellant was not enough to lead to a legal right vested in the appellant in respect of the suit property in the absence of any material to show even a semblance of right held by the appellant in respect of suit property. It cannot be said that the Courts below have committed error in dismissing the suit.

7. In view of the above, it is found that no substantial question of law arises in the present appeal, and accordingly it is dismissed.

JUDGE

KOLHE