

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

Writ Petition No.480 of 2018
(Laddevi wd/o Shyamsunder Sharma and ors. .vs. Smt. Laxmibai w/o
Gulabrao Rahate)

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

Court's or Judge's orders.

Mr. D.G. Paunikar, Advocate for Petitioners.

CORAM : Manish Pitale, J.
DATED : March 01, 2019.

By this writ petition, the petitioners (original plaintiffs) have challenged order dated 16.08.2017 passed by the Court of 13th Joint Civil Judge, Senior Division, Nagpur (trial Court) in Regular Civil Suit No. 422 of 2009 whereby suit for declaration, possession and permanent mandatory injunction filed by the petitioners has been disposed of on preliminary issue. The trial court had framed issues in the suit on 07.01.2012, including issue no.4, which pertained to the question as to whether the respondent (original defendant) proves that the suit property and her house were situated in a slum area. At the stage when the plaintiffs had filed their affidavit in lieu of the evidence, the respondent filed an application for dismissal of the suit on the ground that since the suit property was located in slum area, in the absence of permission from the competent authority under the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, the suit was not maintainable.

2. By the impugned order, the trial Court has disposed of the suit by observing that if the petitioners are able to obtain permission under the provisions of the said Act from the competent authority, they could file a fresh suit.

3. Mr. D.G. Paunikar, learned counsel for the petitioners, has pointed out that the course adopted by the trial Court was wholly erroneous because the said issue was already framed as issue no.4 in the suit and that the trial Court ought to have decided all the issues on merits together. By not doing so and passing the impugned order, the petitioners were effectively deprived of their right to file an appeal, not only on the said issue but they stood deprived of consideration and determination all other issues on merits framed by the trial Court. Upon notice being issued, the sole respondent was served but none has appeared on behalf of the respondent. On the last occasion, when this writ petition was listed on 22.02.2019, it was specifically adjourned for today to give one more opportunity to the respondent to appear before this Court. Despite service, since the sole respondent has chosen not to appear before this Court, the writ petition is being taken up for consideration on merits.

4. A perusal of the impugned order shows that the trial Court has taken up an issue to be decided as a preliminary issue, when the very same issue was already framed along with other issues as issue no.4. The question as to whether the suit property would fall within the slum area as defined under the said Act, was an issue that was directly concerned with the question

of maintainability of the suit, but the same ought to have decided along with other issues that were already framed by the trial Court on 07.01.2012. Instead of permitting the parties to lead evidence in respect of the said issues, the trial Court erroneously picked up the said application for dismissal of suit filed on behalf of the respondent and passed the impugned order. The impugned order has disposed the suit with an observation that if the petitioners obtain permission from the competent authority under the aforesaid Act, they could file fresh suit. The said approach adopted by the trial court is found to be wholly erroneous by this Court and the trial Court would have been well advised to decide the suit on merits on all the issues that were already framed. In any case, even the said issue on the question as to whether the suit property falls within the definition of slum area under the aforesaid Act, would require detailed evidence to be led by the rival parties.

5. In view of the above, the writ petition is allowed, the impugned order is quashed and set aside and the trial Court is directed to decide the suit on merits.

JUDGE