

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

SECOND APPEAL NO.58/2019

Hardayalsingh Khushalsingh Sandhu

..VS..

Eknath S/o Wasudeorao Saraf

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

Court's or Judge's orders

Shri S. R. Gupta, Advocate for the appellant
Shri Rohit Joshi, Advocate for respondent

CORAM : V. M. DESHPANDE, J.

DATED : 12/07/2019

Heard Shri S. R. Gupta, the learned counsel
for the appellant and Shri Rohit Joshi, the learned
counsel for the respondent.

2] The present appeal is by the original defendant against whom a suit for removal of encroachment, possession and damages was filed, i.e. Regular Civil Suit No. 340 of 1980. The learned Joint Civil Judge Junior Division, Chandrapur on 11/01/1989 decreed the suit, against that an appeal was carried i.e. Regular Civil Appeal No. 29 of 1989. The said appeal was also dismissed. Against that defendant and present appellants filed a second appeal i.e. S.A. No.198 of 2004 before this Court. The said second appeals was admitted on substantial questions of law formulated in the same. One of the substantial question of law formulated, was as under:

“(2) Whether it can be said on the facts of the case that permission of competent authority under the provisions of Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ought to have been obtained before the institution of the suit ?”

This Court (Coram : A. S. Chandurkar, J.) on 24/07/2017 observed in judgment as under:

“Substantial question of law No.2 is accordingly answered by holding that prior permission of competent authority was not liable to be obtained in the facts of the present case as the notification came into force after filling the suit. However, the appellate Court ought to have followed the course as prescribed by provisions of order 41 Rule 28 of the Code of Civil Procedure, 1908 while permitting production of additional evidence.”

3] With these observations the judgment and decree passed in Regular Civil Appeal No. 29 of 1989 on 03/12/2003 was upset and the appeal was remanded back.

4] After the remand, the learned lower appellate

Court passed the judgment and decree dated 30/08/2018. The Appellate Court dismissed the appeal as under :

“1.The Reg. Civil Appeal No.29/1989 is hereby dismissed.

2. The impugned Judgment and decree dated 11.01.1989 passed by the learned first Civil Judge (J.D.), Chandrapur in Reg. Civil Suit No. 340/1980 is hereby maintained. It is however made clear that the decree will have to be executed by requisite permission of the competent authority under Section 22(I)(b) of the Maharashtra Slum Areas (Improvement and Development) Act, 1971.”

Hence, this second appeal.

5] Shri S. R. Gupta, the learned counsel for the appellant invited my attention to point No.6 formulated by the learned Appellate Court, which reads as under:

(6) Whether the defendant proves that the suit premises falls within the notified area under the notification dated 26.12.1996 and the decree is not executable ?

He submits in the present case, since the permission is not given by the competent authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 the suit was not

maintainable.

6] I am afraid that this submission of the learned counsel for the appellant is to be entertained in this second appeal in view of the decision given by this Court in Second Appeal No.198 of 2004 between the same parties. Admittedly, the judgment of this Court in Second Appeal No. 198 of 2004 was not challenged by the present appellant before the Hon'ble Apex Court.

7] Admittedly, in the present case when the suit was filed at that time there was no notification notifying the area as slum area, however, the said was issued after institution of the suit.

8] The Appellate Court has also observed that the decree will be executed only if the permission is granted by the competent authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Till that time the decree cannot be executed.

9] In the aforesaid state of facts, in my view there is no substantial question of law involved in the present appeal.

Hence, the appeal is dismissed. No costs.

JUDGE