

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 737 OF 2019
WITH
CIVIL APPLICATION NO. 611 OF 2018

Executive Engineer, Kolhapur Irrigation ... Applicant/Appellant
Division

V/s.

Tushar Shivputra Banne ... Respondent

Mr. Nitin Padmakar Deshpande for the appellant/applicant.

Mr. Sugandh B. Deshmukh for the respondent.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 26th FEBRUARY 2020

P.C. :

1. The appellant herein is the original defendant no. 1 in Regular Civil Suit No. 984 of 2013. The suit was filed seeking vacant possession of Gat No. 106 Hissa No.2 (more particularly having area 00 h. 8.2R) having area 30x24 feet, situated at Haldi, Tal-Karveer, District-Kolhapur.

2. The admitted facts are as follows:-

a) The plaintiff is the owner of the said land. He has valid title to the said land, as he had purchased the property by a registered sale deed.

b) It is contended that the executive engineer had requested the owner to erect temporary shed in order to supervise the erection of (Kolhapur Patbandhare) a small dam. It was also agreed between the parties that the said shed would be removed, upon completion of the work.

3. It was contended in the plaint that the said work of the dam was completed sometime in the year 1977. However, the Executive Engineer had not removed the shed. A notice was also issued. However, there was no reply to the said notice.

4. It is pertinent to note that the plaintiff had issued a notice to the defendant nos. 1 and 2 under section 80 of C.P.C on 20th June 2013. However no reply was filed. Therefore, the plaintiff was constrained to file Regular Civil Suit No. 984 of 2013 seeking vacant possession. Notices were issued to the defendant. None appeared for the defendant and hence the suit had proceeded ex-parte.

5. The suit was decreed in favour of the plaintiff by the judgment and order dated 29th January 2015.

6. The defendant being aggrieved by the said judgment and order had filed Regular Civil Suit No. 85 of 2015 before the District Judge at Kolhapur. The appellant had contended that the suit had proceeded ex-parte and therefore it would be necessary to remand the suit. An issue was framed to that effect and answered in the negative.

7. The learned Appellate Court after considering the documents and evidence on record dismissed the appeal vide judgment and order dated 7th January 2017. Hence, this second appeal.

8. The issue that needs to be framed for consideration is as follows:-

Whether notice issued under section 80 of Code of Civil Procedure was valid, legal and proper”

9. It was the specific contention of the plaintiff that even prior to issuing notice under section 80 of Code of Civil Procedure there were several communications between the parties. However, defendant had turned a deaf ear towards the said notices and none of the notices were replied. In fact, there is an oral agreement between the parties that as soon as the construction of the dam was over, the Executive Engineer would hand over the vacant peaceful possession in favour of the title holder i.e. the plaintiff. Defendant had not abided by the said agreement.

10. It is pertinent to note that the said shed was not used for any purpose since the work of supervision, of the construction of dam was over and therefore, the plaintiff has every right to seek re-conveyance of said shed in his favour and revocation of oral agreement. The notice under section 80 was issued on 21st June 2013 and the suit was filed after giving opportunity to the defendant. Hence, the issue framed by the appellant deserves to be answered in the affirmative and it has to be held that the notice issued under section 80

was legal and valid. Hence, the respondent herein is entitled to seek vacant and peaceful possession of the said shed.

11. At this stage, Mr. Deshpande the learned counsel for the respondent submits that proposal for acquisition of the said land is given to the Collector on 1st February 2020. This court cannot be oblivious of the fact that the second appeal was heard on 28th January 2020. This Court was not inclined to admit the second appeal. Thereafter steps are being taken to acquire the suit land to defeat the execution of decree passed in favour of the respondent.

12. The learned counsel for the appellant had sought liberty to amend the cause title of the second appeal. Amendment was carried out forthwith and the matter was scheduled to be heard on 4th February 2020. However, this Court was not available for Judicial work on 4th February 2020 and before the next schedule date the proposal was filed on 1st February 2020. There is no plausible explanation as to why the said proposal was made after more than 20 years. Be that as it may, as on today the learned counsel Mr. Deshpande seeks two years time for vacating the said premises and making an alternative arrangement to keep the needle valves for regulating the flow of water.

13. The photos of the subject suit property are placed on record which show that it is an abandoned and dilapidated structure. There is no material on record to even remotely indicate that any person, at any point of time had even attempted to open the shed.

14. However, taking into consideration that the executive Engineer needs to make alternative arrangement, it would be in the interest of justice to grant three months time to vacate the said premises and hand over peaceful possession to the respondent.

15. The second appeal being sans merits stands dismissed. The appellant is granted three months time to vacate the said premises and hand over the peaceful possession in favour of the respondent.

16. Civil Application is accordingly disposed of.

(SMT. SADHANA S. JADHAV, J)