

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.302 OF 2012
WITH CIVIL APPLICATION NO.6171 OF 2012

Baburao Shankarrao Jadhav

... Appellant

Versus

Gram Panchayat Kendra (Kh)
and another

... Respondents

...

Mr.Sachin S. Deshmukh– Advocate for Appellant

Mr.K.N. Lokhande – Advocate for respondent nos.1 & 2.

....

CORAM : GAURI GODSE, J.

DATE : 7th January, 2023

PER COURT :

Second Appeal No.302 of 2012 :-

1. This appeal is filed by the original plaintiff. Trial Court decreed the suit and declared that notices dated 2nd March, 2004 and 17th March, 2004 issued by the respondents are illegal and the respondents were restrained from dismantling the house of the appellant. The said decree by the trial Court is reversed by the appeal Court and suit filed by the appellant is dismissed.
2. I have heard both learned counsel appearing for the parties.

Second appeal raises substantial questions of law as formulated by the appellant in ground nos.III and IV of the appeal memo. Hence, the second appeal is **admitted** on substantial questions of law formulated in the said grounds, which are reproduced below :-

“III) Whether the First Appellate Court is justified in overlooking the authority of the respondent in respect of effecting correction in the village record, admittedly when the Form 8 was issued in favour of the appellant declaring the appellant as a owner of House No.194 admeasuring 418 Sq. ft.

IV) Whether the First Appellate Court is justified in overlooking the authority of the respondents to issue impugned notice, when the respondents themselves have given a declaration that, the appellant is owner of House No.194 and possesses the area in the light of said declaration, whether the respondents can appropriate and reprobate, while issuing the impugned notice.”

3. Learned counsel appearing for the respondents waive service.
4. Call record and proceedings.
5. Printing dispensed with
6. Appellant to file private paper book containing judgments of both the courts, first appeal memo, pleadings, notes of evidence and

exhibited documents, within a period of six months from today.

Civil Application no.6171 of 2012 :-

1. By order dated 5th September, 2012, there is already order passed directing the respondents to maintain status-quo as on that date.

2. The challenge in the suit was with respect to the notices dated 2nd March, 2004 and 17th March, 2004 issued by the Gram Panchayat for removal of the encroachment. If during pendency of the second appeal, notices are implemented, then the second appeal itself would become infructuous. Since the filing of the suit, the suit property is protected by way of interim relief, the protection needs to be continued during the pendency of second appeal. It will be appropriate that even the appellant maintains status-quo with respect to the suit property and not change nature of the suit property and/or create any third party interest in the suit property during pendency of the second appeal. Hence, during pendency of the second appeal, both the parties shall maintain status-quo with respect to the suit property.

3 Civil application is disposed of.

[GAURI GODSE, J.]