

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 227 OF 2018

Uday s/o Baburao Chaunda
Age : 45 years, Occu. : Business,
R/o. Near Government Rest House, Latur
Ta. And Dist. Latur .. Appellant

Versus

1. Aruna w/o Manmathappa Gungune
Age : 51 years, Occu. : Household
R/o. Masjid Road, Latur
Ta. And Dist. Latur
2. The Commissioner,
Latur Municipal Corporation,
Latur, Ta. And Dist. Latur .. Respondents

Mr. N. D. Kendre, Advocate for the Appellant.
Mr. D. S. Bhapkar, Advocate h/f Mr. S. C. Swami Chakurkar, Advocate
for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 24th AUGUST, 2023.

P C. :-

. Heard the parties at length.

2. The appellant has challenged the judgment and order dated 20.06.2017 passed by the learned Principal District Judge, Latur in Regular Civil Appeal No. 122/2015 dismissing the appeal. The learned Judge by way of dismissing the appeal confirmed the judgment and

decree passed by the learned 3rd Joint Civil Judge Senior Division, Latur dated 10.08.2015 granting injunction against the present appellant – original defendant No. 1. The respondent No. 1 filed a suit for injunction as there was apprehension of interference with the possession at the hands of present appellant. It is the case of respondent No. 1 that he has purchased the land to the extent of 2000 sq. ft. from Gat No. 77A. The appellant had no concern with the said property, however, he filed an application for deleting the name of respondent No. 1 from the record maintained in the Municipal Corporation. It is on that, the respondent No. 1 apprehended threat to his possession at the hands of the appellant.

3. In the suit, summon was issued to the present appellant. Defendant No. 2 – Municipal Corporation, Latur came to be deleted subsequently as no relief was prayed against the Corporation. The appellant in spite of service of summons appeared in the suit, however, did not file any written statement though has sought various adjournments. An order to proceed without say also was passed and still no steps were taken by the appellant to set aside no W.S. order. The appellant chose not to cross-examine the witnesses. Thus, the evidence went without challenge. The learned Trial Judge thereafter proceeded with the suit. The respondent No. 1 filed affidavit in lieu of evidence

and produced on record the copy of sale deed at Exhibit-33. The respondent No. 1 also produced on record form No. 8A at Exhibit-34 and closed his evidence.

4. The learned Trial Court in view of this held that the plaintiff has proved the case. So far as apprehension is concerned, it is observed that the appellant had made an application to the Corporation raising question about the ownership of the property and therefore, case of apprehension was made out. On the above findings, the learned Trial Judge passed decree restraining the appellant from causing any interference with the property and peaceful enjoyment by the respondent No. 1.

5. The present appellant thereafter, filed Regular Civil Appeal No. 122/2015 and challenged the said judgment passed by the learned Trial Judge. In the appeal mainly the case was that, the plaintiff has failed to prove his case. Even there is no contest by the defendant. It is the duty of the plaintiff to prove his case and it is also the duty of the Court to be satisfied only on the evidence of the plaintiff. Merely because the defendant has not contested the suit is no reason to allow the suit and to pass a decree. It is further case of the appellant in the First Appellate Court that proper opportunities were not given to the

appellant. Learned advocate for the appellant did not intimate to the appellant about the dates of hearing and it is for that reason the appellant could not contest the suit.

6. The learned Appellate Court on hearing all the parties decided the appeal and confirmed the decree passed by the learned Trial Court. From the judgment of the learned Appellate Court it is seen that, the Court has considered that the plaintiff had submitted the certified copy of sale deed and the same was exhibited. No objection was raised by the appellant. It was thus held that, it is not open for the appellant to object the said proof. The Court further considered that the appellant could not make out the case to show that he was the owner of the property and dismissed the appeal.

7. Before this Court the appeal is vehemently argued by the learned advocate for the appellant. He submits on the strength of the judgment in the case of **Balraj Taneja and another Vs. Sunil Madan and another** reported in **(1999) 8 SCC 396** that the Court is not to act blindly upon the admission of a fact by the defendant in the written statement, nor to proceed to pass judgment merely because a written statement is not filed by the defendant to controvert the facts set out by the plaintiff in the plaint. He thus submits that, in view of sub rule (2) of Rule 5 of Order

8 of the Code of Civil Procedure (for short “C.P.C.”) it was not open for the learned Trial Court to pass a decree merely for the reason that there was no contest. It was necessary for the plaintiff to prove his case and it is only then after the Court could have passed a decree.

8. Learned advocate for the appellant referred to another judgment in the case of C. N. Ramappa Gowda Vs. C. C. Chandregowda (dead) by LRs. and another reported in (2012) 5 SCC 265. The Hon’ble Apex Court in the said case while considering Order 8 Rule 10 of the C.P.C. held that, before passing a judgment the Court shall ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint. It is further held in the said judgment that, if the plaint indicates disputed questions of fact involved in the case, then it would not be safe for the Court to record an ex parte judgment without directing the plaintiff to prove the facts. Further observation is that, such order can be passed if the Court is clearly of the view that the plaintiff’s case even without any evidence is prima facie unimpeachable and the defendant’s approach is clearly a dilatory tactic to delay the passing of a decree.

9. Third judgment, learned advocate for the appellant relied upon,

is the judgment in the case of **Shantilal Gulabchand Mutha Vs. Tata Engineering and Locomotive Company Limited and another** reported in **(2013) 4 SCC 396**. In this case, the Hon'ble Apex Court has considered earlier case of **Balraj Taneja and another** (supra) which is already discussed and it reiterated the principle that merely because there is not contest from the defendant a decree cannot be passed unless plaintiff proves his case.

10. Learned advocate for respondent No. 1 submits that, no case is made out to call for interference in the concurrent judgments. He submits that, the respondent No. 1 had filed his affidavit in lieu of evidence. He had produced on record the copy of sale deed and also Form No. 8A. The said evidence is not controverted. The appellant did not even cross-examine the witness. He submits that, when defendant in spite of appearing in the suit did not contest the suit, both the Courts were right in holding that the plaintiff has proved his case and he prays for dismissal of the case.

11. This Court has considered both the judgments of the learned Trial Court as well as learned Appellate Court. It is clear from the judgments that, in spite of service of notice, the appellant did not file any written statement though was represented by a lawyer. No attempt

is made to file written statement. He even suffered the order of no W.S. and still did not file any application for setting aside no W.S. order. Even after evidence was recorded. He did not cross-examine the plaintiff's witness. This Court finds that, in such circumstances no mistake is committed by both the Courts below.

12. In the case of **Balraj Taneja and another** (supra), the Hon'ble Apex Court has recorded that, no Court can act blindly upon the admission of a fact made by defendant in the written statement or even in absence of written statement. It is stated that, what needs to be seen is that, the Court must be satisfied that a case is made out by the plaintiff to allow the suit. Further observation is that, if in the plaint itself there are disputed questions of fact involved, then it is necessary for the plaintiff to prove the case. It is in such cases no judgment be passed without requiring plaintiff to prove the facts. There cannot be any dispute about the propositions of this judgment and also of other two judgments which are relied upon by the appellant.

13. In the case of **C. N. Ramappa Gowda** (supra), the Hon'ble Apex Court has considered as to when the suit can be decreed. It is observed that, the Court must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not

possibly be passed without requiring him to prove the facts pleaded in the plaint. Secondly, if from reading of the plaint itself some disputed questions of fact appears and two versions are possible. Thirdly, if the plaintiff's case prima facie is unimpeachable and the defendant's approach is clearly to play dilatory tactics to delay the passing of a decree.

14. This Court finds that, in this case the learned Trial Judge has rightly taken on record the evidence of the plaintiff. The plaintiff has not only filed the affidavit, but has also produced on record the copy of sale deed and Form No. 8A showing that the property stands in his name. In such case this Court finds that, there was no question of any disputed facts or giving rise to two different versions in the plaint. The plaint was simple and clear without giving rise to disputed questions and therefore, the Court has rightly passed a decree. Thus, this Court finds that, no substantial question of law is made out in the appeal and the same deserves to be dismissed.

15. The appeal is dismissed without any costs.

(KISHORE C. SANT, J.)

P.S.B.