



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 644 OF 2015

Kamlakar Chhaganrao Khardekar
(Deceased) through LRs

.. Appellant

Versus

Lalitprasad s/o Bhalaprasad Jaiswal

.. Respondent

Mr. R. J. Nirmal, Advocate for the appellant.

Mr. S. P. Shah, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 17th JANUARY, 2024.

PER COURT :

1. This appeal is filed under Section 100 of Code of Civil Procedure taking exception to the judgment and decree dated 2nd February, 2015 passed in Regular Civil Appeal No. 207/2007 confirming dismissal of suit being Special Civil Suit No. 180/1998 with exemplary cost.

2. Parties are referred to by their nomenclature in the original proceeding for the sake of convenience.

3. Learned counsel for the plaintiff submits that the Trial Court has committed error in initially refusing to consider the

evidence of witness Idris recorded in Special Civil Suit No. 4/1996 and in the next breath, the Court has considered the evidence on merit. This, according to him, amounts to be an error in law. As regards judgment of First Appellate Court, it is argued that the First Appellate Court has wrongly upheld refusal by Trial Court of the request of the plaintiff to examine Idris as witness with observation that it is futile to examine him once his evidence is recorded in Special Civil Suit No. 4/1996.

4. Record indicates that an application was moved before the Trial Court for recording evidence of Idris. This application came to be rejected with observation that since evidence recorded in Special Civil Suit No. 4/1996 is relied upon by the plaintiff, it would only amount to repetition of evidence. The entire endeavour of plaintiff before the First Appellate Court was to convince the Court that the Trial Court has initially taken view about not considering evidence of Idris however, eventually, while passing judgment the said evidence was considered. In the facts and circumstances of the case, no perversity can be found with this order passed by the Trial Court.

5. On the point of dismissal of suit with compensatory cost of Rs. 3,000/-, it is sought to be argued by learned counsel for plaintiff that that no finding is recorded by the Trial Court that the agreement of sale on the basis of which the suit came to be filed was forged document. He also contends that as defendant has not entered the witness box, the suit ought not to have been dismissed with compensatory cost. For the purpose of deciding this issue, material evidence on record was sufficient. It is not law that for the purpose of imposing compensatory cost against plaintiff, defendant must examine himself. This can be certainly decided on the basis of available material on record and having regard to the facts and circumstances of case. Perusal of judgment of Trial Court shows that findings are recorded with regard to frivolity of the suit by giving proper reasons. In the facts and circumstances of case the said finding is not perverse. Hence, no interference is called for therein. Having regard to the aforestated facts, no substantial question of law is involved in this appeal. Hence, appeal stands dismissed.

(R. M. JOSHI)
Judge

dyb