

Iresh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 764 OF 2019
WITH
CIVIL APPLICATION NO. 1577 OF 2019
IN
SECOND APPEAL NO. 764 OF 2019**

Ramesh Govindrao Malve

.....Appellant

Vs.

Sou. Laxmikanata Ajit Alkunthe and anr

.....Respondents

Mr. Sarang S. Aradhya a/w Ms. Gauri Velankar and Mr. Shantanu Gurav for the appellant

Mr. Prasad P. Kulkarni for respondent no. 1.

IRESH
MASHAL

CORAM : GAURI GODSE, J.

DATE : 20th SEPTEMBER 2024

ORDER:

1. This second appeal is filed by the original defendant no. 1 ('defendant') to challenge the concurrent judgments and decrees declaring the plaintiff to be a legal allottee of the suit property under the provision of The Maharashtra Housing and Area Development Authority Act, 1976 ('MHADA Act'). It is further declared that the transfer of the suit property in the name of the defendant is not valid

and legal.

2. Learned counsel for the appellant submitted that the suit was bad for want of notice under section 173 of the MHADA Act. Learned counsel for the appellant relied upon the written statement filed by MHADA thereby stating that the procedure for transfer of the suit property in the name of defendant was completed and there was valid transfer. He further submits that officer of the MHADA was examined as witness by the plaintiff. In the cross-examination, the officer admitted that the application filed for transfer in favour of the defendant was completed and there was a valid transfer in favour of the defendant.

3. Learned counsel for the appellant thus submits that though the officer of MHADA was examined who admitted that there was valid transfer in favour of the defendant, both the Courts failed to appreciate the vital evidence which clearly indicates that transfer of the suit property in favour of the defendant was a valid transfer. Learned counsel for the appellant thus submits that the second appeal would require consideration on the aforesaid aspect that vital piece of oral evidence by way of admission given by the officer of MHADA is

ignored by both the Courts. He thus submits that the second appeal would require consideration on the aforesaid grounds which raise substantial questions of law.

4. Learned counsel for the respondent no. 1 i.e. original plaintiff supports the impugned judgments and decrees. He submits that there is no dispute that there is a valid allotment in favour of the plaintiff. The documents of title in favour of the plaintiff are not disputed. He further submits that based on the documents of title in favour of the plaintiff, both the Courts have rightly decreed the suit and accepted the title of the plaintiff. He further submits that appellant failed to adduce any evidence in support of his claim on title. There is no document produced on record to indicate any valid transfer of title of the suit property in favour of the defendant. With regard to the objection raised on the ground of want of notice under section 173 of the MHADA Act is concerned, learned counsel for respondent no. 1 points out the findings recorded by the Trial Court regarding issuance of notice dated 10th September 2012 as a valid compliance under section 173 of the MHADA Act. He submits that the findings recorded by the Trial Court are confirmed by the first Appellate Court by re-examining the pleadings and evidence on record. He thus submits that the grounds

raised by the appellant does not raise any substantial questions of law.

5. To consider the aforesaid submissions, I have perused the judgments of both the Courts as well as paper-book of the first appeal.

6. Plaintiff's title is not disputed. The defendant claims title to the suit property based on transfer of allotment in his favour. Admittedly no documents are produced on record to support his contention regarding any valid transfer in his favour. Both the Courts have examined notarised documents based on which the defendant claims that the suit property is transferred in his name. After examining the documents on record which are in detail referred to in the judgment of the Trial Court, a finding is recorded in favour of the plaintiff to accept her valid title on the suit property.

7. A perusal of the impugned judgments indicate that the appellant failed to produce any document on record or support his contentions by leading any oral evidence. The reasons recorded by both the Courts indicate thorough examination of the pleadings as well as documentary oral evidence on record. I do not find any perversity or any illegality in the reasons recorded by both the Courts. In the absence of any document of title in favour of the defendant, no fault

can be found in the reasons recorded by both the Courts. The issue regarding notice under section 173 of the MHADA Act is also dealt with in the impugned judgments. The point of issuance of notice is dealt with by both the Courts after examining pleadings and evidence on record. Hence, in the second appeal, same cannot be re-examined which would amount to re-appreciation of facts and evidence on record which is not permissible under section 100 of Code of Civil Procedure, 1908.

8. In view of the aforesaid, the grounds raised on behalf of the appellant would not require any consideration by this Court as the same do not raise any substantial question of law. Hence, the second appeal is dismissed.

9. In view of dismissal of the second appeal, Civil Application No. 1577 of 2019 is dismissed as infructuous.

[GAURI GODSE, J.]