

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.49 OF 2017

Shri. Tejpal Mangaldas Shah	...Appellant
<i>Versus</i>	
Vishnukumar Madanalal Jagetiya	...Respondents

Mr. Nikhil Pujari i/b Mr. P. N. Joshi for the Appellant.
Mr. Rameshwar N. Gite for Respondent Nos.1 and 2.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 28th FEBRUARY, 2024

P. C. :

1. Being dissatisfied by the judgment dated 14th January 2015 passed by the Appellate Court in Regular Civil Appeal No.18/2005 partly allowing the appeal only to the extent of directing the parties to bear their own costs thereby upholding the judgment of the Trial Court dated 18th January 2005 dismissing the Suit, the original plaintiff is before this Court.

2. RCS No.70/1996 was preferred by the plaintiff seeking declaration that defendant Nos.1 and 2 have no right to store inflammable material in the godown situated in the suit property, that the construction is made on the village road by way of encroachment which is illegal and

that defendant Nos.3 to 5 which are the statutory authorities have violated the various statutes and have given illegal permissions for making construction upon the suit property. The case of the plaintiff is that the plaintiff is the owner of Gut No.111 and his mother is the owner of Gut No.105 situated at Mouze, Narayangaon and defendant No.1 has purchased 57 R from Gut No.57. The land of defendant Nos.1 and 2 is situated near land of the plaintiff. It was pleaded that NA permission which has been granted is in violation of the statute as 'Kabulayat' was not as per the law. It was further pleaded that while constructing the godown the no objection certificate from defendant No.5 was not obtained. It was pleaded that the plaintiff's house is situated in Gut No.111 which is in close proximity to the godown and by storing inflammables danger is caused to the house of the plaintiff.

3. The Suit came to be resisted by defendant No.1 contending that he has taken all required permissions for storing explosives in his godown premises and permits have been renewed till 31st March 1999. The Trial Court answered the issues against the plaintiff and dismissed the Suit. As against this, appeal came to be filed and the Appellate Court partly allowed appeal only to the extent of setting aside the compensatory cost.

4. Heard Mr. Nikhil Pujari for the Appellant and Mr. Rameshwar N. Gite for Respondent Nos.1 and 2.

5. Considered the submissions and perused the record.

6. The only submission raised by learned counsel appearing for the appellant is that N.A. permission has not been granted as per the statute as defendant No.1 did not submit any "*Kabulayat*" for the purpose of getting N. A. permission. According to him N. A. permission was not in conformity with the procedure prescribed for obtaining N. A. permission by reason of non submission of "*Kabulayat*" and the grant of N. A. permission is in violation of the statute.

7. Admittedly, the plaintiff has no concern with the land purchased by defendant No.2. It is also undisputed that defendant No.1 is in possession of all required permissions for the purpose of storing explosives in the godown and has necessary permission in place from the other statutory authorities.

8. According to the plaintiff as "*Kabuliyat*" was not submitted, N. A. permission could not have been granted. The fact remains that

there is N. A. permission in favour of defendant No.1 and the same presumes that the required documents were submitted by defendant No.1 and were considered by the authorities while grant of N. A. permission. The Trial Court as well as the Appellate Court on the basis of appreciation of evidence on record including the evidence of Talathi who has deposed that without giving "*Kabulayat*" no such permission can be given by his department has rightly presumed that as NA permission has been granted in favour of the plaintiff the "*Kabulayat*" must have been given.

9. Apart from the fact that there is no perversity in the findings of the Trial Court and the Appellate Court which has been demonstrated, the fact remains that for the purpose of obtaining any declaration the provisions of Section 34 of Specific Relief Act 1963 provides that any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right.

10. In the present case, admittedly the appellant has no interest in the property which belongs to defendant No.1 and as such Suit could not have been instituted under Section 34 of Specific Relief Act, 1963.

11. In exercise of powers under Section 100 of CPC it is not permissible for this Court to re-appreciate the evidence unless perversity is demonstrated. Mr. Pujari, learned counsel for the appellant has not been able to demonstrate any perversity in the findings apart from submitting that no “*Kabulayat*” has been given for obtaining NA permission which the plaintiff appellant has not been able to establish. Admittedly all permits have been granted by various statutory authorities in favour of defendant No.1. That being so no substantial question of law arises.

12. Appeal stands dismissed.

(SHARMILA U. DESHMUKH, J.)