



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.22 OF 2024

Anil Mohanlal Kalantri

VS.

Ikramurahim Abdul Rahim Sheikh and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. K.R. Bhise, Advocate for appellants.

CORAM : G.A. SANAP, J.

DATE : 1st MARCH, 2024.

Heard learned Advocate for the appellant on the proposed substantial questions of law. Perused the record and proceedings.

2. On going through the record and proceedings, I am of the view that no substantial question of law arises in this appeal. Respondent No.1 is the original plaintiff. Respondent No.2 is the original defendant No.1.

3. The complaint was made by the appellant to the respondent No.2 stating that the structure occupied by respondent No.1 was in dilapidated condition. The structure was likely to fall at any time. There was a danger to life and property of the adjoining occupants. On the basis of this complaint, respondent No.2- Nagar Parishad, Desaijanj

conducted the necessary inquiry and issued notice to respondent No.1 to show cause as to why the structure should not be demolished. Respondent No.1 filed the civil suit contending that the action initiated was in collusion between the appellant and respondent No.2.

4. The parties adduced the evidence. Trial Court found that the action was in accordance with law and as such dismissed the suit filed by respondent No.1 seeking permanent injunction restraining the appellant and respondent No.2 from dispossessing him from the suit property. Respondent No.1 filed the appeal against the judgment and decree. The Appellate Court found that the proper opportunity of hearing was not given to respondent No.1 on the complaint of the appellant during the course of inquiry, conducted by respondent No.2. The Appellate Court therefore, allowed the appeal and decreed the suit. The operative part of the judgment and decree of the Appellate Court is as follows:

“1. The appeal is allowed with costs.

2. The judgment and decree passed by the learned Civil Judge (Junior Division), Desaijanj in Regular Civil suit No.15/2010 dated 16.03.2016 is hereby reversed and set

aside.

3. The defendants No.1 and 2 are hereby directed not to obstruct the possession of the plaintiff over the suit property till appropriate inquiry is held by giving opportunity of being heard to the plaintiff regarding the issue of demolition of the suit property.”

3. The Appellate Court, on the basis of the available material observed that respondent No.1-plaintiff has been in possession of the property at least since 1973-74. It has come on record that respondent No.1 was inducted in the property by the appellant. The appellant contended before the trial Court that he inducted respondent No.1 in the part of premises. He has further contended that respondent No.1 made unauthorized construction on the remaining part of the property and continued to occupy the same as his gratuitous licensee. The Appellate Court recorded a finding that the opportunity of hearing was not granted to respondent No.1 during the course of inquiry. The action was violative of the principle of natural justice and fairness. The Appellate Court therefore, directed the appellant and respondent No.2 that they shall not obstruct

the possession of respondent No.1 over the suit property till appropriate inquiry is held by giving opportunity of being heard to respondent No.1 regarding the issue of demolition of the suit property. It is to be noted that the Appellate Court has not granted a blanket injunction. The Appellate Court has observed that the inquiry was not conducted by strictly adhering to the principles of natural justice and fairness. The question of demolition of the suit property has to be decided finally by respondent No.2 after conducting the necessary inquiry. It is open to respondent No.2 to conduct the inquiry. The inquiry and subsequent action depending upon the result of inquiry would be in the interest of the appellant as well as respondent No.1. On the basis of this, it could not be said that right of the appellant to seek redressal of his grievance has been taken away.

4. In view of this, I do not find any perversity or mistake in the finding recorded by the Appellate Court. Appellate Court has endeavored to balance the scales of justice. Accordingly, I conclude that no substantial questions of law arises in the appeal.

5. Accordingly, Second Appeal is dismissed.

(G. A. SANAP, J.)