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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL ST NO. 5134 OF 2025
WITH
INTERIM APPLICATION NO. 1968 OF 2025
IN
SECOND APPEAL ST NO. 5134 OF 2025**

Basappa Sidappa Kamble and anrAppellants

Vs.

**B. G. Construction Technology Pvt.
Ltd and anrRespondents**

**WITH
SECOND APPEAL ST NO. 5137 OF 2025
WITH
INTERIM APPLICATION NO. 1960 OF 2025
IN
SECOND APPEAL ST NO. 5137 OF 2025**

Babasaheb Baliram Kakade and orsAppellants

Vs.

**B. G. Construction Technology Pvt.
Ltd and anrRespondents**

**WITH
SECOND APPEAL ST NO. 5139 OF 2025
WITH
INTERIM APPLICATION NO. 1971 OF 2025
IN
SECOND APPEAL ST NO. 5139 OF 2025**

Gafur Husen Pathan and OrsAppellants

This is the corrected order pursuant to speaking to minutes order dated 5th March 2025.

Vs.

**B. G. Shirke Construction Technology
Pvt. Ltd and and anr**

....Respondents

**WITH
SECOND APPEAL ST NO. 5141 OF 2025
WITH
INTERIM APPLICATION ST NO. 5142 OF 2025
IN
SECOND APPEAL ST NO. 5141 OF 2025**

Sunil Baliram Kakade and Ors

.....Appellants

Vs.

**B. G. Construction Technology Pvt.
Ltd and anr**

....Respondents

**WITH
SECOND APPEAL ST NO. 5143 OF 2025
WITH
INTERIM APPLICATION NO. 1965 OF 2025
IN
SECOND APPEAL ST NO. 5143 OF 2025**

Narsing Yallappa Mhetre and Ors

.....Appellants

Vs.

**B. G. Construction Technology Pvt.
Ltd and anr**

....Respondents

**Mr. Bharat Gadhavi a/w Mr. Aniket Shitole, Mr. Sarvesh Deshpande,
Trushna Shah, Pratik Sabrad, Vinayak Shelar, Mansi Dande and Mr.
Vishal Navale Advocate for the Appellants
Mr. Vineet Naik, Senior Advocate, Mr. Madhur Surana, Ms. I. Barva
and Mr. Muraddal Parerwala i/b M/s. Cawforrd Bayley and Co. for
respondent no. 1**

This is the corrected order pursuant to speaking to minutes order dated 5th March 2025.

Mr. Atul Damle, Senior Advocate i/b Mr. Shivram A. Gawade a/w Mr. Deepak R. More for respondent no. 2

CORAM : GAURI GODSE, J.

DATE : 17th FEBRUARY 2025

ORDER:

1. Heard learned counsels for the parties. These second appeals are filed by the plaintiffs to challenge the separate orders passed in their suits rejecting the plaint under Order VII Rule 11 of Code of Civil Procedure, 1908 (CPC) on the ground of bar under Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act'). The separate appeals preferred by the plaintiffs are dismissed by separate orders. However, since the contentions in all the appeals are similar with regard to the slum notification in respect of survey no. 124/6 and 124/7, all the appeals are decided by this common order.

2. Learned counsel for the appellants submits that the plaintiffs are entitled to produce documents and lead evidence to support their prayer for declaration of title as prayed in the suit. He submits that in the absence of any opportunity to the plaintiffs to lead their evidence in support of their pleadings, the plaint cannot be rejected at the

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threshold. To support his submissions, learned counsel for the appellants relies upon the legal principles settled in the case of *Qari Mohammed Zakir Hussain and Ors Vs. Municipal Corporation of Greater Mumbai and others 2001*¹ and *Zodiac developers Pvt. Ltd. Mumbai Vs. Krishna Developers, Mumbai and others*². He, therefore, submits that the second appeals would require consideration as they raise substantial questions of law on the rejection of plaint at the threshold. He submits that there is no ground to reject the plaint either under clause (a) or clause (d) of Rule 11 Order VII of CPC. He, therefore, submits that the second appeals would require consideration.

3. Learned senior counsel appearing for respondent no. 1 submits that the prayer itself is a sufficient indication that the suit is barred in view of Section 42 read with Section 35 of the Slum Act. He submits that the ownership claimed by the plaintiffs on the structure is part of the slum notification issued in respect of survey no. 124/6 and 124/7. He submits that after failing at all stages, right up to the Hon'ble Apex Court, the plaintiffs, by taking undue advantage of the liberty granted by the Hon'ble Supreme Court in the order dated 26th July 2024, filed

¹ 2001 SCC Online Bom. 871

² 2017 (1) MHLJ.

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these suits seeking similar reliefs as sought by these appellants in the earlier round of litigation before the slum authority. He submits that there is no dispute that the appeals preferred by the appellants were dismissed by the Apex Grievance Redressal Committee (AGRC) and the writ petition filed before this Court is also dismissed and the same is confirmed by the Honble Apex Court. He, therefore, submits that the second appeals would not raise any substantial question of law.

4. To examine the contentions raised on behalf of the appellants with regard to the prayers in the suit and the plaintiffs' right to lead evidence in support of their prayer, I have carefully perused the pleadings in the plaint. The plaintiffs have described the suit property as a structure consisting of a ground plus first floor situated at Bhimnagar. The plaint further states that the plaintiffs are permanent residents and residing in the said property for last many years. The plaintiffs have not specifically pleaded the description of the land on which the structure is constructed. The pleadings do not refer to any particulars of the land on which the suit structure is situated. The plaint further refers to dismissal of the plaintiffs' appeals by AGRC and the dismissal of the writ petition and dismissal of their Special Leave Petition before the Hon'ble Apex Court. There is dispute raised in the

plaint regarding the survey carried out under the provisions of the Slum Act pursuant to the notification. The substantive prayers in the plaint read as under:

“b. It may kindly be declared that the Plaintiffs are the owners of the suit property.

c. It may kindly be declared that the suit property is not a part of slum area notified by Defendant No. 2 in its notification.

d. The Defendant No. 1 and 2, their agents, servants or any other person claiming through them may kindly be restrained by decree of permanent injunction from disturbing the possession of Plaintiffs over the suit property or from demolishing the suit structure standing over the suit property.

e. The Defendant No. 1 and 2, their agents, servants or any other person claiming through them may kindly be restrained by order of temporary injunction from disturbing the possession of Plaintiffs over the suit property or from demolishing the suit structure standing on the suit property.”

5. The first prayer in the suit is for declaration of ownership of the suit property which is described as the structure situated in Bhimnagar.

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The prayer clause (c) seeks a declaration that the suit property i.e. the suit structure is not part of the slum area notified by defendant no. 2 in its notification. Thus, the contents of the prayer itself indicates that the suit property is declared as part of the slum area notified by defendant no. 2 in its notification. There is no dispute that the appellants had approached AGRC and their objections are rejected. A perusal of the contents of the plaint and in particular prayer clause (c) clearly indicates that the prayers in the suit are barred in view of Section 42 read with Section 35 of the Slum Act. Sub-section (1A) of Section 35 clearly provides for a remedy before the Slum Appellate Authority, if any person is aggrieved by any notice order or direction issued under sub-section (1). Since the plaintiffs were aggrieved by the notification, the plaintiffs had already preferred the appeal before the AGRC. The plaintiffs, taking advantage of the liberty granted by the Hon'ble Apex Court have pleaded in the plaint regarding declaration of their ownership on the suit property. However, the contents of the plaint and the prayers refer to the suit property described as part of the slum area notified by defendant no. 2. Hence, in view of the pleadings in the plaint and the prayers, there is a clear bar under section 42 read with section 35 of the Slum Act.

6. A perusal of the impugned order refers to the provisions of the Slum Act for holding that the suit is barred in view of Section 42 of the Slum Act. In view of the pleadings in the plaint, I see no reason to interfere in the findings recorded by both the Courts. In view of the pleadings, the plaint is rightly rejected on the ground that it is barred by law.

7. There cannot be any debate on the legal principles settled in the decisions relied upon by the learned counsel for the appellants. However, considering the pleadings and the prayers in the plaint, the legal principles settled in the decisions relied upon by the learned counsel for the appellants are of no assistance to the facts of these cases. Hence, it deserves rejection under clause (d) of Rule 11 of Order VII of CPC. The plaintiffs' suit would not warrant any trial, in view of the facts pleaded in the plaint and the bar under the Slum Act. Hence, the grounds raised on behalf of the appellants would not require any consideration by this Court.

8. The second appeals do not raise any substantial question of law. Hence, the second appeals are dismissed.

9. In view of dismissal of the second appeals, all pending

applications are disposed of as infructuous.

10. At this stage, learned counsel for the appellants seeks extension of ad-interim protection granted by this Court to enable the appellants to approach the Hon'ble Apex Court.

11. Learned senior counsel for respondent no. 1 opposes the extension of the ad-interim relief on the ground that this is a fifth round of litigation. He submits that inspite of giving various opportunities to the appellants, they failed to produce any documents to support their contentions even before the Slum Authority.

12. Subject to the appellants filing an undertaking before this Court stating that they would vacate and remove their structures, in the event favourable orders are not passed by the Hon'ble Apex Court, the ad-interim protection granted by this Court on 10th February 2025 shall continue for a period of six weeks. The undertaking shall also state that the appellants shall not create any third party interest or part with possession in favour of any third party.

13. Necessary undertaking to be filed in this Court within two weeks. It is clarified that if the affidavit-cum-undertaking as directed above is

not filed within two weeks, the protection granted by this Court shall stand vacated without further reference to the Court.

[GAURI GODSE, J.]