

(2013) 08 BOM CK 0024

In the Bombay High Court

Case No : Appeal From Order No. 150 of 2009 in SC. Suit No. 2336 of 2007 with Civil Application No. 178 of 2009 in Appeal From Order No. 150 of 2009 with Civil Application No. 754 of 2011 in Appeal From Order No. 150 of 2009

Bansnarayan Sitaprasad Patel

APPELLANT

Vs

Shri Sairam (SRA) Co-operative Housing Society Limited and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 — Section 42

Citation : (2014) 1 ALLMR 76 : (2013) 5 MhLj 787

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : V.R. Tripathi instructed by M/s. V.R. Tripathi and Associates, for the Appellant; Rajesh B. Parab for Respondent No. 2. and Mr. Paresh S. Madkaikar for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—The Appellant-Original Plaintiff has challenged order dated 16 December 2008, passed by the learned Judge of the City Civil Court, Greater Bombay, whereby his Suit for declaration about his entitlement to the joint possession of the transit premises Room No. 702, Gomati Nagar Transit Camp, G.K. Marg, Worli, Mumbai and other related prayers including of injunction, were not entertained, by holding that the Court has no jurisdiction and further directed to represent before the Competent Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, SRA) read with Order 7 Rule 10 of the CPC (for short, CPC). Section 42 of the SRA reads as under:-

42. Bar of Jurisdiction.- Save as otherwise expressly provided in this Act, no civil

court shall have jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under this Act, to determine; and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

The learned Judge therefore, accepted the preliminary objection raised by the Defendants and passed the impugned order. There was no protective relief granted by this Court, however on 12 June 2009, admitted the matter.

2. Both the learned counsel make statement that after the development, the developer already given possession of the premises to Respondent No. 3. They are in exclusive possession of the constructed premises as per the allotment of the permanent alternate accommodation in lieu of old premises. The case of Respondent No. 3 is that the Plaintiff-Appellant was alone allowed to reside in the old hut and therefore, no other family members are entitled to reside in transit, as well as, in the new premises. The same is even confirmed by the Slum Rehabilitation Authority in order dated 19 September 2006. The learned Judge however, by the impugned order dismissed the Suit and thereby without determining the rights of the Plaintiff with regard to his claim in the temporary, as well as, permanent structure, though the concerned Respondent is not denying the right to occupy the said premises by the Plaintiff alone but not with his other family members. The Court in view of bar of jurisdiction may not grant injunction and may not be in position to determine the right, action and/or order passed by the Competent Authority or Tribunal under the Act. But the right and the private disputes between the parties, in the present facts and circumstance, which is nothing but a Civil right has to be adjudicated by the Court and cannot be by the Competent authority and/or the Tribunal. I am inclined to observe that the preliminary objection so accepted by the Court and return of the Suit for proper presentation as referred to above, is incorrect. The Civil right cannot be adjudicated and/or concluded in such fashion specifically when the Competent Authority and/or the Tribunal has no jurisdiction and/or authority to determine and the title and/or the Civil disputes between the parties, though question relates to the occupation and/or rights flowing disputed long and authorized occupation of a hut in question. The dispute so initiated at the stage where the question about joint occupation in transit camp, now in view of permanent accommodation granted to the Respondent concerned, needs to be adjudicated in view of the positive averments even made by the concerned Respondent and has noted in the order that the Plaintiff-Appellant alone has a right to occupy the premises and no other family members. This itself, in my view, sufficient to set aside the impugned order as the Plaintiff is entitled to put his case and the Court also required to adjudicate his claim of joint possession as prayed/claimed in accordance with law.

3. In the present facts and circumstances, therefore, I am inclined to observe that the dismissal of the Suit on the preliminary issue, is required to be quashed

and set aside.

4. The Civil Court has jurisdiction to entertain and try the Suit where the private dispute arises between the parties in view of their joint possession of a hut, which admittedly now converted into permanent structure/accommodation, in view of the development of the property.

5. Therefore, the impugned order is quashed and set aside. The Suit is restored back to the original position. It is made clear that the liberty is granted to the Plaintiff to take appropriate steps in accordance with law, either to continue with the Suit by bringing subsequent development on record and/or by filing a fresh Suit as advised.

6. The issue requires still to be adjudicated by the Civil Court of joint occupation of the Plaintiff with his family and/or alone, as the finding is given by the Competent Authority and as the case of concerned Respondent is that the Plaintiff alone is entitled and not his family members. This cannot be adjudicated in any way by the Competent Authority under the SRA.

7. The Appeal from Order is accordingly allowed. There shall be no order as to costs. In view of the disposal of Appeal from Order, Civil Application No. 178 of 2009 and Civil Application No. 754 of 2011, are also disposed of. No costs.