
(2010) 07 GUJ CK 0065

In the Gujarat High Court

Case No : Second Appeal No's. 14 and 292 of 1984

Mohanlal Kevalaram Sadhnani

APPELLANT

Vs

Baroda Municipal Corporation

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 230, 231, 487
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 100

Citation : (2010) 07 GUJ CK 0065

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Apurva Kapadia, in Second Appeal No. 292 of 1984, for the Appellant; Apurva Kapadia in Second Appeal No. 14 of 1984 and P.G. Desai in Second Appeal No. 292 of 1984, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—Second Appeal No. 14 of 1984 is filed by the appellant - original plaintiff u/s 100 of the CPC challenging the judgment and order passed by the learned 2nd Extra Assistant Judge in Regular Civil Appeal No. 125 of 1983 confirming the judgment and decree passed by the learned Joint Civil Judge (J.D.), Vadodara in Regular Civil Suit No. 21 of 1978.

2. This second appeal was admitted and following substantial questions of law were formulated for determination of this Court:

Whether the Trial Court was entitled to dismiss the suit when the Court held that a notice u/s 487 of the Bombay Provincial Municipal Corporation Act was required to be served on the respondent - Corporation by the plaintiff - appellant before filing the suit and the same was not served?

Whether in view of the finding that no notice as required u/s 487 of the B.P.M.C. Act was served, both the Courts below were justified in dismissing the suit and the appeal?

Whether in view of the finding regarding non-service of notice u/s 487 of the B.P.M.C. Act proper order of rejection of the suit under Order 7 Rule 11 of the C.P.C. ought to have been passed?

Whether the learned Extra Assistant Judge erred in law in holding that the place at which the appellant was preparing tea was public place?

3. Second Appeal No. 292 of 1984 is filed by the appellants - original plaintiffs challenging the judgment and order passed by the learned Joint District Judge, Vadodara in Regular Civil Appeal No. 362 of 1983 confirming the judgment and decree passed by the learned Civil Judge (J.D.), Vadodara in Regular Civil Suit No. 1939 of 1972.

4. This Second Appeal was admitted and following substantial question of law was formulated for the determination of this Court:

Whether the action of removal of the alleged encroachment can be justified by having recourse to the provisions of Sections 230 & 231 of the Bombay Provincial Municipal Corporation Act. If so, has the Corporation followed the procedure for removal of the alleged encroachment in accordance with law ?

5. In Second Appeal No. 14 of 1984, initially, Late Mr. P.M. Raval, learned advocate appeared on behalf of the appellant. However, on his death, fresh notice was issued on the appellant on 01.07.2010. Notice was duly served on the appellant. However, nobody appears on behalf of the appellant.

6. In Second Appeal No. 292 of 1984, Mr. Apurva Kapadia, learned advocate appears. He also appears for the respondent in Second Appeal No. 14 of 1984 whereas Mr. P.G. Desai, learned advocate appears for the respondent in Second Appeal No. 292 of 1984.

7. In both the matters, the issue is common. The suit was filed by the plaintiffs against Vadodara Municipal Corporation for permanent injunction restraining the respondent Corporation from taking away the lorry and goods of the plaintiff kept in a lorry. After framing the issues and after appreciating the evidence on record, the learned Trial Judge dismissed the suit. This judgment and decree of the Trial Court in both the suits were challenged before the lower Appellate Court by way of Regular Civil Appeal and the lower Appellate Court has also confirmed the judgment and decree of the Trial Court.

8. Mr. Apurva Kapadia, learned advocate appearing for the appellants - original plaintiff in Second Appeal No. 292 of 1984 has fairly submitted that there are concurrent findings of fact by both the Courts below.

9. Even otherwise, the judgment and decree passed by the Courts below are based on documentary evidence and after proper appreciation of facts and evidence on record, they have arrived at a conclusion which cannot be interfered with by this Court in Second Appeal while exercising its appellate jurisdiction, more particularly, considering the limited scope of the Second Appeal.

10. In the above view of the matter, the Court finds itself in concurrence with the view taken by the Courts below and does not see any justification in reversing the view taken by the Courts below. Both the Second Appeals are accordingly dismissed. Parties will have to bear their own costs.