

(2013) 04 BOM CK 0048
In the Bombay High Court
Case No : Appeal From Order No. 137 of 2012

Mr. Ashok B. Nigudkar

APPELLANT

Vs

Mr. Sudhadra P. Nirgudkar and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 2, 35, 42

Citation : (2013) 4 ALLMR 753 : (2013) 4 MhLj 175

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : Y.E. Mooman instructed by Ms. M.B. Gawde, for the Appellant; Yuvraj Patil, for the Respondent No. 1 and Mr. Vishal Kanade a/w Asha Nair instructed by Divya Shah Associates, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—The Appeal takes exception to the order passed by the learned City Civil Court, Mumbai dated 14th November, 2011 thereby holding that the Court had no jurisdiction to entertain and try the suit filed by the present Appellant. The facts in brief giving rise to the present Appeal are as under:-

One Anandibai, who is the mother of the Plaintiff and the mother-in-law of the Defendant No. 1 was holding patch-holder card in respect of the premises at Room No. 117-1/2, Gopal Nagar-1, Pandurang Budhkar Marg, Worli, Mumbai. It is the contention of the Plaintiff that the premises consists of ground floor and loft. According to the Plaintiff, Anandibai had four sons, out of whom, Ramesh expired during the life time of Anandibai. Another son namely Sakharam started residing separately during the life time of Anandibai. It is the case of the Plaintiff that Anandibai, the appellant's family and another brother Prakash and his family were staying in the suit premises. It is further the contention of the Plaintiff that during the life time of Anandibai, she has given ground floor on

leave and license basis and the entire family of Anandibai along with Plaintiff and late Prakash started living on the loft of the premises. However, it is submitted that subsequently after the premises became vacant, the deceased Prakash and his family occupied ground floor premises and the Plaintiff continued to reside on the loft of the premises.

2. It is the contention of the Plaintiff that on 9th April, 1987, Anandibai expired & after her death the deceased Prakash & his family continued to reside on ground floor & Plaintiff and his family occupied first floor. On 29th July, 1999 Prakash died and thereafter the family of Prakash as well as Anandibai were residing as members of one family. It is the contention of the Plaintiff that in a slum development scheme, Defendant No. 1, without consent of the Appellant entered into Tripartite Agreement and also took rent for temporary alternative accommodation. In this premise, the Appellant has also filed a suit for declaration that he was entitled jointly along with the Defendant No. 1 to the old premises i.e. Room No. 117-1/2 & for a further declaration that he was also jointly entitled to permanent joint accommodation to be reallocated in lieu of old premises and other reliefs.

3. It appears that an objection was raised regarding jurisdiction in view of the provisions of Section 42 of the Maharashtra Slum Areas (Improvement, clearance and redevelopment) Act, 1971 (hereinafter referred to as the said Act.) The said objection was upheld by the learned Trial Judge and he returned the plaint for presentation before proper forum under Order VII Rule 10 of the Code of Civil Procedure, 1908. Being aggrieved thereby, the present Appeal.

4. Shri Mooman, the learned counsel appearing on behalf of the Appellant submitted that the learned Judge has grossly erred in returning the plaint. The learned counsel submits that the dispute between the Plaintiff and the Defendant No. 1 inter se could not be a dispute which is covered u/s 42 of the said Act. It is, therefore, submitted that the learned Trial Judge has grossly erred in returning the plaint.

5. Shri Patil, the learned counsel for the Respondent No. 1 and Shri Kanade, the learned counsel for the Respondent No. 2, on the contrary, submits that the learned Trial Judge has rightly passed the order returning the plaint. It is submitted that on harmonious construction of clause (c-b) of Section 2, Section 35 and Section 42 of the said Act, jurisdiction of the Civil Court is ousted. The learned counsel submits that the question regarding as to "who is eligible slum dweller" falls exclusively within the jurisdiction of the Competent Authority or the Appellate Authority, and as such no error could be found with the order passed by the learned Trial Judge. It is further submitted that the suit is the novel way of trying to get something which is already rejected by the Competent Authority. It is submitted that the Competent Authority has already rejected the claim of the plaintiff/appellant and as such the only remedy available to the Plaintiff was to file the Appeal before the Grievance Redressal Committee.

6. For appreciating the rival submissions, it would be necessary to refer to sub section (c-b) of Section 2 and Section 42 of the said Act:-

(c-b):- "eligible slum dweller" means a slum dweller who fulfills such criteria of eligibility as may be prescribed, from time to time, and is declared so eligible by the Competent Authority."

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 (appellate Authority, Competent Authority, Grievance redressal Committee) 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.

7. The perusal of clause (c-b) of Section 2 of the said Act would reveal that it pertains to the definition of eligible slum dweller. The said provision states that a person to be considered as eligible slum dweller, is the one who fulfills such criteria of eligibility as prescribed from time to time and is declared so eligible by the Competent Authority. Under the norms prescribed the power is given to the Competent Authority to declare a person as to whether he is eligible slum dweller or not. u/s 35, a person who is aggrieved by any notice, order, or direction given by the Competent Authority is entitled to appeal to the Appellate Authority who shall be a person holding a post not below the rank of the Additional Collector. Under sub section 1A of the said section any person aggrieved by any notice, order or directions issued by the Appellate Authority, for the purpose of resolving the dispute in relation to the matters of eligible slum dweller being denied tenement etc is entitled to file further appeal before the Grievance Redressal Committee. Sub section 5 of the said Section gives finality to the Grievance Redressal Committee. Section 42 of the said Act, provides that save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Appellate Authority is empowered by or under this Act to determine and further that 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.

8. The harmonious construction of all these provisions would lead to an interpretation that all such matters which are exclusively within the jurisdiction of the Appellate Authority, Competent Authority and Grievance Redressal Authority cannot be entertained by the Civil Court and the Civil Court has no jurisdiction to entertain any dispute in respect of the aforesaid all matters. The perusal of the aforesaid provisions would also reveal that the matter which would come within the jurisdiction of the Competent Authority, would be pertaining to determination of the question regarding eligibility of the person. The matter which would be within the jurisdiction of the Appellate Authority, would be a notice, order or direction issued by the Competent Authority. The matter which would be within the jurisdiction of the Grievance Redressal Committee would be notice, order or direction issued or given by the Appellate Authority for the purpose of resolving

dispute in relation to matters about eligibility of the slum dweller, eligible slum dweller being denied tenement, developer not undertaking and completing the project as per the permission and approval, so also within the stipulated time frame, transit accommodation being unavailable or not provided and likewise.

9. The perusal of the material placed on record would reveal that the Competent Authority while rejected the claim of the Plaintiff, on the ground that the Defendant No. 1 was the person who had entered into tripartite Agreement, and who had given the possession of the hutment to the developer. The perusal of the order would reveal that the Plaintiff had himself admitted that he was residing on loft. It has further been found that the name of the Plaintiff has been shown in the voters' list of 1995 at Serial No. 189, whereas that of the Plaintiff is shown at Serial No. 190. The perusal of the order would reveal that the claim of the Plaintiff has been rejected on the ground that he is residing on loft and his name is not included in Annexure "II".

10. The perusal of the plaint would also reveal that the entire tenor of the case of the Plaintiff is that after the death of Anandibai, it is the Plaintiff and Defendant No. 1, who were jointly entitled to the benefits of the hutment which was occupied by their mother Anandibai. It can thus be seen that the basic prayer of the Plaintiff is for a declaration that he along with the Defendant No. 1 is entitled to the rights flowing from the said hutment. By now, it is the settled position of law that the averments in the plaint cannot be read in isolation and for finding out what is the main relief claimed in the plaint, the plaint has to be read as a whole. The perusal of the plaint would reveal that the basic claim of the Plaintiff is on the basis of being the legal heir of Anandibai who was the original occupant of the suit hut. As such, it would be clear that the main claim in the plaint is against the Defendant No. 1, contending that the Plaintiff and the Defendant No. 1 are entitled to the joint use of the rights flowing from the said hut being legal heirs of the deceased Anandibai.

11. Perusal of the provisions of the said Act referred to hereinabove would reveal that by no stretch of imagination a dispute of nature which is sought to be raised in the plaint can be gone into by the Competent Authority, Appellate Court or Grievance Redressal Committee. In any case, the issue as to rights flowing to the Plaintiff and Defendant as legal heirs of Anandibai could be within the exclusive jurisdiction of the Civil Court and not any other forum.

12. In this regard, it will be relevant to refer to para nos. 12,13 and 14 of the Apex Court, in the case of Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, .

12. Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim Ubi jus Ibi remedium. A litigant, thus, having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless

barred by statute, either expressly or by necessary implication.

13. The civil court, furthermore, being a court of plenary jurisdiction has the jurisdiction to determine its jurisdiction upon considering the averments made in the plaint but that would not mean that the plaintiff can circumvent the provisions of law in order to invest jurisdiction on the civil court although it otherwise may not possess. For the said purpose, the court in given cases would be entitled to decide the question of its own jurisdiction upon arriving at a finding in regard to the existence of the jurisdictional fact.

14. It is also well settled that there is a presumption that a civil court will have jurisdiction and the ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or Tribunal acts without jurisdiction.

13. It can thus be clearly seen that the Apex Court in clear terms has held that a litigant having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. It has been further held that there is a presumption that a civil court will have jurisdiction and the ouster of civil court's jurisdiction is not to be readily inferred. It has been further held that a person taking a plea contra must establish the same.

14. In the present case, as has been discussed herein-above, the dispute interse between the two claimants claiming to be legal heirs of deceased Anandibai, by no stretch of imagination, falls within the scope of powers of the Competent Authority or the Appellate Authority or Grievance Redressal Committee, which falls under Sections 35 and 42 of the said Act.

15. In that view of the matter, the learned Judge has erred in rejecting the plaint. The Appeal is, therefore, allowed. The impugned order is quashed and set aside. The suit is restored to file of the learned Judge. Taking into consideration the facts and circumstances, the hearing of the suit is expedited.