

(2014) 02 BOM CK 0046
In the Bombay High Court
Case No : Second Appeal No. 424 of 2004

Shriram Dattarao Chaudhari and Vishnu Dattarao Chaudhari	APPELLANT
Vs	
Madhaodas	RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 91

Citation : (2015) 5 ALLMR 262 : (2014) 3 MhLj 448

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : R.L. Khapre, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The appellants and their Counsel remain absent. This appeal was listed for final hearing pursuant to order dt. 5.2.2014 passed by this Court. At that time, Mr. Kuldeep Mahalle, learned Counsel for the respondent had submitted that, in view of the ruling in Alok Agarwal and Others Vs. Punam Co-operative Housing Society Ltd. and others and Pratap Issardas Bhatia and Others, , Civil Court has jurisdiction to entertain, try and decide the controversy. This appeal was admitted on 12.7.2005 on the following substantial question of law:

Whether the Civil Court would have taken cognizance of the suit filed by the present respondent for recovery of possession from the appellant in view of Section 91 of the M.C.S. Act ?

The substantial question of law as above was framed by this Court after the appellant was heard for admission on July 12, 2005.

2. Learned Counsel for the respondent submitted that the substantial question of law would not really survive as the controversy is covered by the ruling in the case of Alok Agarwal and Others (cited supra) which also refers to the ruling by Hon"ble Supreme Court of India in Margret Almeida and Others, Vs. Bombay

Catholic Coop. Housing Society Limited and Others, in which, after making reference to Section 91 of the Maharashtra Co-operative Societies Act, 1960, the Hon"ble Supreme Court of India observed that the disputes which are mandatorily required to be referred to the Cooperative Court for adjudication must be the disputes arising between the parties to the dispute who should belong to one or other category specific in clauses (a) to (e) to sub-section (1) of Section 91. Unless the dispute satisfies requirements mentioned in Section 91 of the Maharashtra Co-operative Societies Act, jurisdiction of Civil Court to entertain and try the suit would not be barred and dispute as in the present suit would not attract Section 91 barred u/s. 91 of the Maharashtra Co-operative Societies Act because for the forum of Co-operative Court the dispute must be within the ambit of Section 91, which is touching the Constitution and the management of business of the Society between the parties within clauses (a) to (e) of Section 91.

3. It appears that there are concurrent findings of facts by both the Courts below regarding issue of jurisdiction of the Civil Court to entertain and try the suit in Regular Civil Suit No. 295 of 2000 decided by Joint Civil Judge (Jr. Dn.), Washim on 9.12.2003. Secretary of Pradhyapak Sahakari Gruha Nirman Sanstha Limited, Washim sued the appellants herein (original defendants) for possession on the ground that the defendants had illegally encroached upon the suit site belonging to the plaintiffs which was, in fact, reserved for park and play ground, used as amenities for the members of the Society to protect the site belonging to the Society from any encroachment. Any member of the Society could have sued the defendants who were trespassers i.e. occupation as wrongdoers without any legal right, title in or upon land of the Society. Under these circumstances, the issue was specifically framed regarding jurisdiction of the Civil Court to adjudicate the dispute as to possession of the suit site. The trial Court held that the suit site was owned by Pradhyapak Sahakari Gruha Nirman Sanstha, Washim and it was appreciated that father of the defendants was in service as a watchman of the Society. After his death, the defendants merely as sons of a watchman could not have claimed to have become servant of the Society as they sought to remain in possession on the pretext that they were sons of the watchman who had served the Society. Thus, the learned trial Judge, upon evidence led by the parties, recorded findings of facts in favour of the plaintiff/ Secretary of the Society and passed decree directing the defendants to deliver vacant possession of the suit site to the plaintiff/society which, according to the plaintiff, was encroached upon by the defendants since 30.5.2000. The unsuccessful defendants though filed Regular Civil Appeal No. 1 of 2004 in the District Court, Washim, the first Appellate Court concurrently held that Civil Court had jurisdiction to entertain and try the suit while conforming the decree for possession. Thus, the appeal was dismissed. The same issue in respect of concurrent findings recorded by both the Courts below is again sought to be agitated before this Court by this Second Appeal and substantial question of law, as stated above, was framed. However, since the controversy is now well within

four corners of the ruling in the case of Alok Agarwal and Others (cited supra). It is undisputable that the Civil Court had jurisdiction to entertain and try the suit as the suit was against encroachers for relief of possession of the suit site and special provisions u/s 91 was not at all attracted in view of the ruling of Alok Agarwal and Others (supra) which is also followed the Supreme Court rulings in the cases of Ramesh Chand Ardawatiya Vs. Anil Panjwani, and Margaret Almeida (cited supra). Furthermore, when the suit was tried on merits and Judgment and Order was passed on merits with concurrent findings by first Appellate Court as well; there would be no interference on purely technical ground unless the Judgment by Courts below has occasioned a failure of justice. That being so and when the controversy involved in the matter is no more res integra. In view of the concurrent findings of facts and the rulings as stated above, the appeal must be dismissed. It is accordingly dismissed. No order as to costs.